

make the proposed rule change operative as of the date of this order.

At any time within 60 days of the filing of the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-96-64 and should be submitted by November 25, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37876; File No. SR-CBOE-96-15]

#### **Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change Relating to the Placing of Orders Over the Outside Telephone Lines at the Equity Trading Posts**

October 28, 1996.

#### I. Introduction

On March 12, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission

("Commission" or "SEC"), 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> a proposal to amend its Regulatory Circular governing the use of member-owned or Exchange-owned telephones located at the equity trading post on the floor of the Exchange. The proposed rule change was published for comment and appeared in the Federal Register on April 8, 1996.<sup>3</sup> No comments were received. This order approves the proposal.

#### II. Description of the Proposal

CBOE Rule 6.23<sup>4</sup> currently prohibits orders of any type to be entered via outside telephone lines at equity option trading posts.<sup>5</sup> The rule change would amend this prohibition by permitting market makers only to place orders with floor brokers over the outside telephone lines at equity option trading posts.<sup>6</sup> The policy for use of the telephones at the equity posts will remain unchanged in every other respect. Thus, for example, customers will not be permitted to place orders over the telephones located at the equity posts.

In its filing, the Exchange stated that the purpose of the proposed rule change was to permit market makers to transmit their orders more efficiently even when they need to be off the floor to attend to personal or Exchange business. The Exchange stated in its filing that this change will be particularly useful to those members of the Exchange that are often requested to attend meetings on Exchange matters during the trading day.

Orders of market makers placed over the outside telephone lines pursuant to the amended policy will be counted as off-floor orders for purposes of determining a market maker's compliance with the 80% requirement of Rule 8.7. Pursuant to Interpretation .03 of Rule 8.7, Obligations of Market-Makers, a market maker must execute in-person 80% of his total transactions to receive market maker treatment for off-floor orders. An order that receives

market maker treatment is entitled to certain benefits, such as favorable margin treatment under Federal Reserve Board Regulation T; therefore, there is an incentive for market makers to satisfy the 80% requirement. Also, Interpretation .03 of Rule 8.7 states that the off-floor orders for which a market maker receives market maker treatment shall be effected for the purpose of hedging, reducing risk of, rebalancing, or liquidating open positions of the market maker. Finally, Interpretation .03 to Rule 8.7 also requires a market maker, at a minimum, to execute at least 25% of his total transactions in-person.

As with the current policy governing the use of telephones at the equity trading posts, the Exchange intends to monitor compliance with these conditions by means of customary floor surveillance procedures, including reliance on surveillance by Floor Officials and Exchange employees. In addition, the Exchange will review on a weekly basis clearance data, as it does now, to assure that a market maker meets the 80% in-person requirement.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act,<sup>7</sup> in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Commission believes that the proposed rule change may allow market makers more efficient access to equity option posts when they are off the Exchange floor temporarily which could potentially enhance liquidity. In this context, under CBOE Rule 8.7(a), any orders placed by a market maker over the outside telephone lines at the equity post should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. As noted above, the other requirements of Rule 8.7 should also help to ensure that access to place orders over the outside telephone lines

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

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

<sup>3</sup> Securities Exchange Act Release No. 37050 (March 29, 1996), 61 FR 15542.

<sup>4</sup> Exchange Rule 6.23 prohibits members from establishing or maintaining any telephone or other wire communications between their offices and the Exchange floor, and it authorizes the Exchange to direct the discontinuance of any communication facility terminating on the Exchange floor.

<sup>5</sup> See Securities Exchange Act Release No. 33701 (March 2, 1994), 59 FR 11336 (March 10, 1994) (order approving the Exchange's equity options telephone policy).

<sup>6</sup> Currently, the Exchange permits market makers to place orders with floor brokers via intra-floor lines.

<sup>7</sup> 15 U.S.C. § 78f(b)(5) (1988).

<sup>9</sup> 17 CFR 200.30-3(a)(12) (1994).

will not be used as a method to avoid standing in the crowd and fulfilling market making duties.

The Commission notes that the policy does differentiate between market makers and customers in that the amended policy will continue to prohibit customers from placing orders with floor brokers over the outside telephone lines. By contrast, customers are permitted direct telephone access to enter orders with floor brokers in the trading crowds of certain CBOE index options.<sup>8</sup> However, the Commission believes that it is not unreasonable for CBOE to prohibit customers from placing orders directly with floor brokers in equity options trading crowds. The CBOE has represented to the Commission that CBOE members may not wish that their customers receive direct phone access to equity crowds because equity options tend to be used more widely by retail customers: direct phone access may inhibit member firms' ability to discharge their customer suitability and margin obligations.<sup>9</sup> Furthermore, member firms do not commonly station a floor-broker in each equity trading crowd on the floor.<sup>10</sup> Floor brokers commonly are responsible for representing orders in multiple crowds, which means that customers are less likely to be able to direct orders to a particular floor broker in a particular crowd.<sup>11</sup>

Furthermore, CBOE offers automated systems that permit member firms to ensure that customer orders are swiftly routed to the floor of the exchange.<sup>12</sup> Approximately 70% of customer orders are routed through CBOE's Order Routing System ("ORS"), which provides an electronic interface between the Exchange's trading systems and the member firms' order transmission systems.<sup>13</sup> In summary, because

customer orders can be transmitted quickly to the post through other means, direct customer telephone access may cause compliance problems for members firms while offering uncertain access to the trading crowd and because the Commission has not received any comments about alleged unfair discriminatory effects objecting to the proposed rule change, the Commission believes it is reasonable to conclude that the amended telephone policy is not presently designed to permit unfair discrimination.<sup>14</sup>

The Commission expects the CBOE to maintain surveillance procedures that are adequate to ensure that market makers do not use the amended telephone policy to avoid standing in their respective crowds or to assume de facto an appointment in an option traded at another post. In addition, the Commission believes that the 80% in-person requirement will serve to discourage market makers from utilizing the amended telephone policy to avoid standing in their respective crowds or to assume de facto an appointment in an option traded at another post.

#### IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (File No. SR-CBOE-96-15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 96-28183 Filed 11-1-96; 8:45 am]

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[Release No. 34-37881; File No. SR-OCC-96-09]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Valuation of Government Securities

October 28, 1996.

On July 18, 1996, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR-

OCC-96-09) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On August 22, 1996, OCC filed an amendment to the proposed rule change.<sup>2</sup> Notice of the proposal was published in the Federal Register on September 12, 1996, to solicit comments from interested persons.<sup>3</sup> No comments were received. As discussed below, this order approves the proposed rule change.

#### I. Description

The proposed rule change modifies the valuation methodology on deposits of government securities for margin and clearing fund purposes and expands the category of government securities eligible for deposit to include maturities greater than ten years. Presently, OCC values government securities at either: (1) the lesser of par value or 100% of the current market value for maturities of less than one year or (2) the lesser of par value of 95% of the current market value for maturities between one and ten years.

Government securities were defined by Section 1 of Article 1 of OCC's By-laws as securities issued or guaranteed by the United States or Canadian government or by any other foreign government acceptable to OCC and maturing within ten years. The amendment deletes the ten year restriction.

The proposed rule change also amends Section 3 of Article VIII of OCC's By-laws and Rule 604 of OCC's Rules to establish a new schedule of haircuts.<sup>4</sup> Pursuant to the amendments, Government securities deposited as either clearing fund or margin will be valued at: (1) 99.5% of the current market value for maturities of less than one year; (2) 98% of the current market value for maturities between one and five years; (3) 96.5% of the current market value for maturities between five and ten years; and (4) 95% of the current market value for maturities in excess of ten years.

#### II. Discussion

Since the early 1980's, OCC has revalued Government securities on a monthly basis. Because OCC is now

<sup>1</sup> 15 U.S.C. § 78s(b) (1988).

<sup>2</sup> Letter from Michael G. Vitek, OCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (August 19, 1996).

<sup>3</sup> Securities Exchange Act Release No. 37645 (September 5, 1996), 61 FR 48194.

<sup>4</sup> Article III, Section 3 sets forth the allowable forms of contributions to the clearing fund. Rule 604 set forth the allowable forms of margin deposits.

<sup>8</sup> See Letter from Mary L. Bender, Senior Vice President, CBOE, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated October 18, 1996 (available in Commission's Public Reference Room).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See *id.*

<sup>13</sup> See *id.* ORS routes customer orders that qualify for firm quote guarantees to the Retail Automatic Execution System ("RAES"), which automatically and instantaneously executes such orders. According to CBOE, approximately 1 out of 5 customer orders at the CBOE are executed through RAES. ORS routes pre-opening market orders and limit orders, and limit orders at least one price tick away from the same-side market quote to the Exchange's Electronic Book. Finally, ORS routes market orders not eligible for firm quote guarantees and limit orders "near" the market quote to the trading crowd. Such orders are delivered either to printers or to Public Automated Routing ("PAR") System touch screen terminals in the trading pit.

According to CBOE, the capabilities of the PAR workstation allows customer orders routed through it to "enjoy turnaround time second only to RAES."

<sup>14</sup> See *Timpinano v. SEC*, 2 F.3d 453, 457 (D.C. Cir. 1993) (finding that the Act prohibits only unfair discrimination, not all discrimination).

<sup>15</sup> 15 U.S.C. § 78s(b)(2) (1988).

<sup>16</sup> 17 CFR 200.30-3(a)(12).