

investing in the Fund may conflict; and (c) the Board will monitor events in order to identify the existence of any material conflicts of interest and to determine what action, if any, should be taken in response to any such conflict.

10. Each Fund will comply with all the provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Funds) and in particular, each such Fund will either provide for annual meetings (except to the extent that the SEC may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although the Funds are not within the trusts described in Section 16(c) of the Act) as well as Section 16(a) and, if applicable, Section 16(b) of the Act. Further, each Fund will act in accordance with the SEC's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the SEC may promulgate with respect thereto.

11. If and to the extent that Rules 6e-2 and 6e-3(T) are amended (or if Rule 6e-3 under the Act is adopted) to provide exemptive relief from any provisions of the Act or the rules promulgated thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds, the Participating Insurance Companies and Participating Plans, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent applicable.

12. No less than annually, the Manager, Advisers (or any other investment adviser of a Fund), the Participating Insurance Companies and Participating Plans shall submit to the Boards such reports, materials, or data as such Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Manager, Advisers (or any other investment adviser for a Fund), Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Boards shall be a contractual obligation of the Manager, Advisers (or any other investment adviser of a Fund), Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Funds.

13. If a Plan or Plan participant shareholder should become an owner of 10% or more of the issued and outstanding shares of a Fund, such Plan will execute a participation agreement with such Fund including the conditions set forth herein to the extent applicable. A Plan or Plan participant shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Fund.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44394; File No. SR-CBOE-00-43]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change Relating to Participation Rights in Crossing Transactions

June 6, 2001.

I. Introduction

On August 29, 2000, the Chicago Board Options Exchange, Inc. ("CBOE") 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 amend CBOE Rule 6.74(d), which currently entitles a floor broker representing a member firm to cross a certain percentage of each customer order the firm sends to the floor against another order on behalf of the same firm.

The proposed rule change would: (a) Make clear that Rule 6.74(d) includes the situation where a floor broker is seeking to cross a *solicited* order against

the original customer order; and (b) expand Rule 6.74(d) to allow the floor broker representing the original customer order to solicit the order to trade against it even if that floor broker is not a nominee of the originating firm.

The proposed rule change was published for comment in the **Federal Register** on November 21, 2000.³ The Commission received no comments on the proposal. The CBOE filed Amendment Nos. 1 and 2 to the proposed rule change with the Commission on February 12, 2001, and May 23, 2001, respectively.⁴ This order approves the proposed rule change, accelerates approval of Amendment Nos. 1 and 2, and solicits comments from interested persons on those amendments.

II. 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 exchange⁵ and, in particular, the requirements of section 6 of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act⁷ because it establishes the ability of firms and floor brokers to solicit orders to supply the contra side for customer orders in a manner that matches or improves the price available from the crowd while conforming to the principles and limitations set forth by the Commission in its original approval of Rule 6.74(d) concerning participation rights in crossing transactions.⁸

Amendment No. 1 to the proposed rule change would add Interpretation .07 to Rule 6.74 to make clear that a floor broker may not cross an order that he is holding with an order from a market maker that is then in the trading crowd. Amendment No. 2 would clarify that the proposed change to CBOE Rule 6.74 is intended to supersede the provisions of paragraph (d) of CBOE Rule 6.9, "Solicited Transactions," when the conditions specified in CBOE Rule 6.74 are met. The Commission finds that Amendment Nos. 1 and 2 are

³ See Securities Exchange Act Release No. 43537 (November 9, 2000), 65 FR 69977.

⁴ The substance of Amendment Nos. 1 and 2 is discussed below.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ See Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

appropriate clarifications of the proposed rule change and are consistent with section 6(b)(5) of the Act. In addition, because these amendments clarify the intent of the proposed rule change and thereby strengthen the proposal, the Commission finds good cause for approving their provisions prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

III. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether these amendments are 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-00-43 and should be submitted by July 3, 2001.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-CBOE-00-43), as amended, be, and hereby it is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44393; File No. SR-DTC-2001-08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by The Depository Trust Company Relating to DTC Settling Trades Executed on Nasdaq Europe

June 6, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on, May 25, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides that participants who settle trades executed on Nasdaq Europe through book-entry deliveries at DTC (i) are required to effect the settlement of such trades in the manner prescribed by DTC so that such trades can be separately identified and (ii) authorize DTC to provide to Nasdaq Europe information relating to the settlement of such trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It is expected that on or about June 8, 2001, Nasdaq Europe, an exchange established under Belgian law, will begin listing securities on its European

Trading System. In order to facilitate the settlement of these securities, Nasdaq Europe plans to approve DTC as a settlement location for Nasdaq Europe trades in DTC-eligible securities. To allow Nasdaq Europe to designate DTC as an approved settlement location under Belgian law, DTC must agree to provide Nasdaq Europe upon request with information that DTC has pertaining to the settlement of Nasdaq Europe trades at DTC. In order for DTC to be able to provide this information, DTC must require its participants (1) to effect the settlement of such transactions in a manner that separately identifies them from the participants' other settlement activities² and (2) to authorize DTC to provide information related to such trades to Nasdaq Europe.

Under the proposed rule change, DTC will require that the settlement of Nasdaq Europe trades be effected in a separate subaccount that will be established by the participant solely for the settlement of Nasdaq Europe trades. If it is determined that a more automated solution should be developed in the future, DTC will make the necessary systems changes to allow participants to designate settlement activity relating to Nasdaq Europe trades by entering a special activity code in their deliver order instructions. If such systems changes are made, participants will be required to use the activity code to identify Nasdaq Europe trades. Participants will be kept informed by Important Notices if DTC determines that it will further automate the identification of settlement activity related to Nasdaq Europe trades.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because the proposed rule change will increase operational efficiencies for participants by allowing for the settlement at DTC of Nasdaq Europe trades in DTC-eligible securities. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because all of DTC's risk management controls will continue in effect.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

² Nasdaq Europe plans to issue a compliance notice requiring its members to ensure that settlement at DTC of Nasdaq Europe trades are done in accordance with the procedures prescribed by DTC.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).