SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 27, 2001:

Closed meetings will be held on Tuesday, August 28, 2001, at 10:00 a.m. and Thursday, August 30, 2001, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), 9(B), and (10) and 17 CFR 200.402(a)(5), (7), (9)(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Tuesday, August 28, 2001, and Thursday, August 30, 2001, will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: August 21, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–21521 Filed 8–21–01; 3:48 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44718; File No. SR–CBOE–2001–33]

Self-Regulatory Organizations; Notice of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Options Exchange, Incorporated Relating to Step-up From the Designated Primary Market Maker's Autoquote Price

August 17, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2001, 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 CBOE. On August 16, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to clarify, for purposes of automated step-up, that the term ''Exchange's best bid or offer'' would refer to the Designated Primary Market Maker's (''DPM'') Autoprice price or the price from the DPM's proprietary automated quotation updating system. 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments if received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Debby Flynn, Assistant Director, Division of Market Regulation, Commission, from Steve Youhn, Attorney, CBOE, dated August 15, 2001. (''Amendment No. 1'') In Amendment No. 1, the Exchange made two changes to be proposed rule text. First, the Exchange modified the reference point from which the Exchange will step-up from the Exchange BBO to the Autoquote price. The Exchange amended the rule text to state that step-up will be measured from the price for the series as established by the Autoquote *or* the DPM's proprietary automated quotation updating system. Second, Amendment No. 1 amended the proposed rule text to clarify that if Autoquote is not activated for a particular class or series, that class or series would not be designated as a step-up class. Specifically, the amendment deleted the phrase ''unless otherwise designated by the appropriate FPC'' from the proposal.

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

1. Purpose

Interpretation .02 to CBOE Rule 6.8 establishes the process for the automatic execution of orders through the Retail Automatic Execution System (''RAES'') when the Exchange's best bid or offer (''Exchange's BBO'') is inferior to that of another market. Under this provision, the Exchange automatically fills any equity option order submitted through RAES at any better price being quoted in another market (''step-up''), so long as the price on the away market is better than the Exchange's BBO by no more than one tick (''step-up amount'').[4] If the price on the away market is better by more than the automatic step-up amount (*i.e.,* more than one-tick), the order is rerouted to the DPM for non-automated handling.[5]

As mentioned above, in determining whether the CBOE price is inferior to that of another market, CBOE measures from the ''the Exchange's BBO.'' The term ''Exchange's BBO'' could be interpreted to include any price displayed by the Exchange, whether that price represents Autoquote, a customer order in the limit order book, or a market maker's quote. The purpose of this rule filing is to clarify the term ''Exchange's BBO.'' Under the proposal, the Exchange would amend CBOE Rule 6.8.02 to include new subsection (b).

Under this new subsection, CBOE proposes that the term ''Exchange's BBO'' for purposes of the step-up feature would mean the Autoquote price as established by the DPM or the DPM's proprietary automated quotation updating system [6] for the class or series. Under this change, the Exchange will ''step-up'' to an away market price when the away market price is better than the Exchange's Autoquote price or the DPM's proprietary automated quotation updating system for the same series by

[4] The Commission approved the CBOE automatic step-up plan in Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998) (order approving SR–CBOE–98–13). CBOE Rule 6.42 establishes the minimum trading increments for bids and offers. For option series quoted at or below $3 per contract, the minimum increment is 5 cents. For option series quoted above $3, the trading increment is 10 cents.

[5] The Commission published notice of the filing and immediate effectiveness of a CBOE proposed rule change that would allow the DPM to vary the step-up amount by order size parameter. *See* Exchange Act Release No. 44490 (June 28, 2001), 66 FR 35681 (July 6, 2001) (SR–CBOE–2001–32). The Exchange also has a filing before the Commission (SR–CBOE–2001–08), which would allow the DPM to vary the step-up amount by order entry firm.

[6] *See* Amendment No. 1, *supra* note 3.

no more than the step-up amount applicable to that series. If Autoquote or the DPM's proprietary automated quotation updating system is not activated for a particular class or series, step-up shall not be applicable to that particular class or series. With the exception of this definitional change, the Exchange's step-up procedures as contained in CBOE Rule 6.8.02 remain unchanged.

As an example, assume the following scenario:

- CBOE Autoquote price is $3–$3.30
- Customer order in EBook to sell for $3.20
- Price on Pacific Exchange (''PCX'') is $3–$3.10

In this example, the Exchange's ''BestQuote'' [7] would be $3–$3.20, with the $3.20 price representing a customer limit order in EBook. Under the current rule, a RAES order to buy would be executed on RAES at the PCX price of $3.10 because the CBOE EBook price is within one tick (*i.e.*, $0.10) of the PCX price. Thus, CBOE market participants would be obligated to fill this order automatically, even though the Autoquote price or the DPM's proprietary automated quotation updating system price is two ticks away from the PCX price. The order in the EBook that triggered the step-up would not trade against the RAES order and instead would remain on the book.

The Exchange believes it is reasonable to establish as the Exchange's BBO the Autoquote price or the DPM's proprietary automated quotation updating system for the series for purposes of the step-up feature. The Exchange notes that a customer limit order may not necessarily be representative of the prevailing market. If that customer limit order is, in fact, out of alignment with the prevailing market price, DPMs and market makers, under the current rule, would still be obligated to fill orders automatically at an away market's price if that CBOE customer limit order is within the step-up amount (*i.e.*, one tick) of the away market price. The Exchange believes that this places CBOE market participants at risk of having to fill orders based on errant or uninformed prices.

Furthermore, given the differences in proprietary automatic quotation systems used by market participants on different exchanges, there often are times when one exchange's prices may be several ticks away from another market's prices for a particular class or series. For example, in setting the Autoquote price, a specialist on one exchange may input a volatility figure that is considerably higher or lower than the volatility figure used by the CBOE DPM. As a result, the away market price may be expected to be different (perhaps by several ticks) from the CBOE Autoquote price or the DPM's proprietary automated quotation updating system. The Exchange believes that to force CBOE crowd members to step-up not from their Autoquote price, but from an order that may or may not bear any relation to their Autoquote price, places them at substantial financial risk by forcing them to automatically execute orders at prices they do not believe accurately represent the current market. When the away market is within the step-up amount of the CBOE Autoquote price or the DPM's proprietary automated quotation updating system, however, the Exchange represents that at least CBOE market participants are assured that when a CBOE order is ''stepped-up,'' that it bears some relation to their Autoquote price or the DPM's proprietary automated quotation updating system price.

Accordingly, in the above example under this proposal, a RAES order to buy would not receive automatic step-up and instead, would be routed to the floor for manual handling. If, however, the CBOE Autoquote price were instead $3.00–$3.20, the incoming RAES order to buy would receive automatic step-up and would be executed at $3.10, the price of the away market.

2. Statutory Basis

This proposal would clarify that, for step-up purposes, the Exchange's BBO would only reflect the DPM's Autoquote price or the DPM's proprietary automated quotation updating system. Accordingly, 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.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] 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 on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 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 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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 CBOE. All submissions should refer File No. SR–CBOE–2001–33 and should be submitted by September 13, 2001.

[7] BestQuote simply refers to the best bid and offer currently offered on the Exchange.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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

Jonathan G. Katz,

Secretary.

[FR Doc. 01–21309 Filed 8–22–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44716; File No. SR–PHLX–2001–73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Suspend Imposition of its Payment for Order Flow Fee

August 16, 2001.

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 August 2, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III, below, which Items the Phlx has prepared. 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 Phlx proposes to suspend imposition of its $1.00 payment for order flow fee beginning with contracts settling on or after August 1, 2001.[3] The text of the proposed rule change is available at the principal offices of the Phlx 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, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received. The text of these statements may be examined at the places specified in Item IV below. The Phlx 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

The purpose of the proposed rule change is to suspend imposition of the Phlx's payment for order flow fee for contracts settling on or after August 1, 2001.

In August 2000, the Phlx imposed a $1.00 per contract fee on transactions by Phlx specialists and Registered Options Traders (''ROTs'') in the top 120 options traded on the Phlx.[4] The payment for order flow fee did not apply to index or currency options. In addition, transactions between: (1) A specialist and an ROT; (2) an ROT and an ROT; (3) a specialist and a firm; (4) an ROT and a firm; (5) a specialist and a broker-dealer; and (6) an ROT and a broker-dealer were excepted from the $1.00 fee.[5]

The Phlx believes that its proposal to suspend imposition of the fee is consistent with Section 6(b) of the Act[6] and furthers the objectives of Sections 6(b)(4) and (5) of the Act[7] in that it is an equitable allocation of reasonable fees among the Phlx's members. The Phlx notes that, although it is suspending the imposition of its payment for order flow fee, members may continue to negotiate their own private arrangements with order flow providers to attract options orders to the Phlx.

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

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Phlx neither solicited nor received any written comments with respect to the proposal.

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

The Phlx has designated the foregoing proposed rule change as a fee change pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder,[9] and therefore the proposal has become effective upon filing with the Commission. At any time within 60 days after 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, 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 filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–73 and should be submitted by September 13, 2001.

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[10] 17 CFR 200.30.3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Phlx would continue to provide Phlx specialists and order flow providers with reports regarding the quality of execution of options orders, and specialists or specialist units would continue to be governed by the books and records requirements of Phlx Rule 760. *See* Securities Exchange Act Release Nos. 43436 (October 11, 2000), 65 FR 63281 (October 23, 2000) (SR–Phlx–00–83) and 44405 (June 11, 2001), 66 FR 32859 (June 18, 2001) (SR–Phlx–2001–08).

[4] The Phlx defines a top 120 option as one of the 120 most actively traded equity options in terms of the total number of contracts that are traded nationally based on volume reflected by the Options Clearing Corporation. The Phlx recalculates the top 120 options every six months. For the period from April 2, 2001 through June 30, 2001, when options on the Nasdaq-100 Trust (trading under the symbol QQQ) were added to the program, there were 121 options on the Phlx's list. *See* Securities Exchange Act Release No. 44237 (April 30, 2001), 66 FR 23308 (May 8, 2001) (SR–Phlx–2001–43).

[5] *See* Securities Exchange Act Release Nos. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77); 43480 (October 25, 2000), 65 FR 66275 (Nov. 3, 2000) (SR–Phlx–00–86 and SR–Phlx–00–87); and 43481 (Oct. 25, 2000), 65 FR 66277 (November 3, 2000) (SR–Phlx–00–88 and SR–Phlx–00–89).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).