current asset is the stock of Citizens and upon consummation of the acquisition discussed below, the stock of Valley. C&T will not have any other subsidiaries. For the fiscal year ended December 31, 2000, C&T's operating revenues, net income and total assets were approximately $253,312, $110,586, and $13,282,139, respectively.

Citizens, a Pennsylvania public-utility company, is principally engaged in the distribution of electricity to approximately 6,300 customers in an approximately 55 square mile service territory in parts of two counties in central Pennsylvania. Citizens is subject to regulation as a public-utility company as to retail electric rates and other matters by the PA PUC. For the fiscal year ended December 31, 2000, Citizens' operating revenues and net income were approximately $9.3 million and $191,000, respectively. Assets of Citizens were approximately $8.4 million consisting of approximately $5.2 million in identifiable electric utility property, plant and equipment and approximately $3.2 million in other corporate assets.

On October 4, 2000, C&T entered into an agreement to purchase the Pennsylvania and New York natural gas assets of NUI Utilities, Inc (''NUI'') (''Asset Sale Agreement''). The Asset Sale Agreement provides that C&T shall purchase substantially all of the natural gas assets of NUI located in Pennsylvania and New York (''Acquisition''). Upon consummation of the Acquisition, C&T will transfer its ownership interest in the NUI assets to Valley. Upon the transfer of the assets to Valley, Valley will issue 1000 shares of common stock, all of which will be held by C&T (''Stock Acquisition''). The shareholders of C&T and NUI have approved the Stock Acquisition at their respective shareholder meetings.

Valley will be a public-utility company as defined in section 2(a)(5) of the Act. Valley will be engaged in the business of selling and distributing natural gas in parts of one county in north-central Pennsylvania and in portions of two counties in south-central New York. Valley will serve approximately 6,300 retail customers in a 104 square mile territory lying substantially within the Commonwealth of Pennsylvania with the remaining portion in the state of New York. Approximately 5,000 of Valley's customers will be located in Pennsylvania with the remaining 1,300 customers located in New York. Valley will be an investor-owned public-utility subject to regulation by the PA PUC and the New York Public Service Commission.

Each of C&T, Wilderness, Tri-County and Claverack requests an order under section 3(a)(1) exempting it from all provisions of the Act except 9(a)(2) following consummation of the Stock Acquisition. Each states that it will remain predominantly intrastate in character and carry on its business substantially in Pennsylvania, the state in which each company and every material public-utility company subsidiary are organized. In the alternative, Tri-County and Claverack, request an order under section 3(a)(2), exempting it from all provisions of the Act except 9(a)(2).

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. 34–45909; File No. SR–CBOE–2002–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Removal of the Restriction on Floor Brokers From Trading in the Same Crowds as Affiliated Designated Primary Market-Makers

May 10, 2002.

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 April 18, 2002, 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 CBOE. 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 delete existing CBOE Rule 8.91(d) that prohibits a member affiliated with a Designated Primary Market-Maker (''DPM'') from acting as a floor broker in any trading crowd in which that DPM is the appointed DPM. 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 it 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 aspects of such statements.

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

1. Purpose

In 1998, CBOE filed a proposed rule change to update and reorganize its rules relating to the Exchange's DPM program.[3] As part of that filing, CBOE adopted CBOE Rule 8.91, which limits the dealings between DPMs and its affiliates.[4] CBOE Rules 8.91(a) through (c) describe the specific activities that are prohibited between a DPM and its affiliates and CBOE Rule 8.91(e) allows for exemptions to these restrictions if the related members can establish appropriate procedures to restrict the flow of material non-public and market information between the DPM and its affiliates.

The Commission approved CBOE Rule 8.91(d) in connection with the Exchange's DPM program.[5] CBOE Rule 8.91(d) provides, in pertinent part, that no member affiliated with a DPM may act as a floor broker in any trading crowd in which the DPM acts as a DPM. Although many other exchanges have rules similar to CBOE Rule 8.91 (a) through (c) and 8.91(e),[6] no other exchange's rules specifically prohibit a floor broker from trading in the same crowd of its affiliated specialist or lead market maker. The CBOE has concluded that the continued imposition of such a limitation on CBOE members can, and has, created a barrier to competition.

CBOE Rule 8.91(d) was added to the revised DPM rules for a very narrow

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43004 (June 30, 2000), 65 FR 43060 (July 12, 2000) (SR–CBOE–98–54).

[4] In addition, CBOE revised and restated CBOE Rule 8.81 as 8.91. *See supra* note 3.

[5] *See supra* note 3.

[6] *See e.g.,* American Stock Exchange Rule 193; New York Stock Exchange Rule 98; and Pacific Exchange Rule 6.83.

purpose.[7] Specifically, CBOE included this restriction to prevent DPMs from creating a wholly-owned floor brokerage subsidiary solely to circumvent its obligations and restrictions as a DPM. In proposing CBOE Rule 8.91(d), the Exchange raised concerns that, by directing orders to an affiliated floor broker, a DPM could circumvent its obligations to: (1) Place in the public order book orders eligible for entry into the book; (2) accord priority to any order which the DPM represents as agent over the DPM's principal transactions; (3) not charge any brokerage commission with respect to the execution of any order for which the DPM acts as both agent and principal; and (4) not represent discretionary orders.[8] CBOE represents, however, that these concerns were more relevant to the structure of the DPM organizations in 1998 than today.

In 1998, most DPMs were closely held entities and only about half of CBOE's equity option crowds were part of the DPM program. Since CBOE filed the proposal to implement CBOE Rule 8.91(d), there have been significant developments in the trading environment on CBOE, as well as in the entire industry. Somewhat recently, CBOE expanded the DPM program to virtually all trading crowds on the CBOE floor.[9] Also, the options industry has seen a growing number of consolidations, a trend which has affected a large number of CBOE firms and their respective DPM operations. Consequently, a large number of firms that now run CBOE DPM operations are diversified and integrated corporate entities.

CBOE represents that with this growing trend toward consolidation, member firms and potential members are precluded from pursuing new trading operations simply because a subsidiary or an affiliated company holds a DPM allocation(s) or is conducting a floor brokerage operation on CBOE. Even more serious is that current CBOE floor brokers would be required to discontinue existing operations simply because the floor broker's firm is included in a legitimate merger or acquisition transaction that creates an affiliation with the DPM operation, despite the fact that the DPM is a wholly separate entity with little or no direct managerial control over the floor brokers' operations. The CBOE represents that this was not the desired effect of CBOE Rule 8.91(d).

Additionally, in the absence of CBOE Rule 8.91(d), the CBOE believes that any attempt by a DPM organization to circumvent its obligations, in the manner proscribed by the Exchange in proposing Rule 8.91(d) would be covered by existing rules of the Exchange. [10] CBOE asserts that CBOE Rule 8.91(d) was not enacted to prevent floor brokers from trading with affiliated DPMs in the DPM's crowd, but to prevent member firms from creating a mechanism to blatantly flout its affirmative legal obligations. Due in large part to the recent changes both in the make-up of the CBOE's trading floor and in its membership, CBOE believes that CBOE Rule 8.91(d) has produced overly restrictive and unintended prohibitions. CBOE represents that, in the current environment, CBOE Rule 8.91(d) puts the CBOE at an undue competitive disadvantage with all other option exchanges. As such, in light of the industry trend toward consolidation and, most importantly, in consideration of the fact that no other exchange imposes such a restriction on its members, the CBOE believes that CBOE Rule 8.91(d) creates an unnecessary barrier upon its members, and potential members, and therefore, should be deleted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed 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.

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

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

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 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–CBOE–2002–16 and should be submitted by June 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[7] *See supra* note 3.

[8] *See* Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691 (May 3, 1999).

[9] CBOE represents that the CBOE index option pits do not utilize DPMs.

[10] For example, CBOE Rule 6.43, Manner of Bidding and Offering, provides, in part, that ''[a]ll bids and offers shall be general ones and shall not be specified for acceptance by particular members.'' CBOE Rule 6.43 would prohibit a DPM from directing its trades. Also, CBOE Rule 7.4, Obligations for Orders, subparagraph d, Execution, requires a DPM to ''use due diligence to execute the orders placed in his custody at the best prices available to him under the Rules of the Exchange.'' CBOE Rule 4.1, Just and Equitable Principles of Trade, provides a general protection from any such illicit intentions, stating that: ''No member shall engage in acts or practices inconsistent with just and equitable principles of trade. Persons associated with members shall have the same duties and obligations as members under the Rules of this Chapter [IV].''

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).