On July 21, 2004, CenterPoint announced the sale of Texas Genco, which will be accomplished in two steps. The first step is expected to be completed in the fourth quarter of 2004 and will involve Texas Genco purchasing the approximately 19% of its shares owned by the public at a price of $47 per share, and then selling its fossil-fueled generating business to the buyer. In the second step, expected to take place in the first half of 2005 following receipt of approval by the Nuclear Regulatory Commission, Texas Genco will merge with a subsidiary of the buyer, thus transferring its remaining asset, an interest in a nuclear generating facility.

Total cash proceeds from both steps will be approximately $2.9 billion. CenterPoint intends to use the net after-tax proceeds of about $2.5 billion to retire debt. In the first stage of the sale transaction, Texas Genco will receive cash for the sale of its fossil generating business and will dividend $2.231 billion of those proceeds to Utility Holding. Utility Holding in turn will simultaneously dividend that amount to CenterPoint, which will repay bank debt and release a pledge that banks hold on the Texas Genco common stock. In the second step, Utility Holding will receive $700 million in cash for the sale of its stock in Texas Genco and will dividend that amount to CenterPoint.

Because it is the vehicle through which CenterPoint holds its utility interests, Utility Holding has recorded a substantial charge to its retained earnings account in connection with the extraordinary events of the sale of Texas Genco and the stranded cost proceeding. In addition, the magnitude of the expected proceeds from both phases of the sale of Texas Genco exceeds Utility Holding's ability to dividend to CenterPoint the proceeds from each phase of the sale out of retained earnings.

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

Margaret H. McFarland,

Deputy Secretary.

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take any additional material charges to earnings in connection with the stranded cost proceeding.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50682; File No. SR–CBOE–2004–45]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Trading of Complex Orders on the CBOE Hybrid System

November 17, 2004.

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 July 19, 2004, 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 November 8, 2004, the CBOE: submitted Amendment No. 1 to the proposed rule change; withdrew Amendment No. 1; and submitted Amendment No. 2 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 CBOE proposes to adopt a complex order rule applicable to trading on the CBOE Hybrid System. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

Rule 6.45 Priority of Bids and Offers—Allocations of Trades

* * * * *

(a)–(d) No change.

(e) Complex Order Priority Exception: A [member holding a] spread, straddle, combination, or ratio order (or a stock-option order or security future-option order, as defined in Rule 1.1(ii)(b) and Rule 1.1(zz)(b), respectively) *may be executed at* [and bidding (offering) on] a net debit or credit [basis] *price* (in a multiple of the minimum increment) [may execute the order] with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in Rule 1.1(ii)(a) and Rule 1.1(zz)(a) respectively, have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

* * * Interpretations and Policies * * *

No change.

Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

* * * * *

(a) No change.

(b) (i)–(ii) No change.

(iii) Exception: Complex Order Priority:

A [member holding a] spread, straddle, combination, or ratio order (or a stock-option order or security future-option order, as defined in Rule 1.1(ii)(b) and Rule 1.1(zz)(b), respectively) *may be executed at* [and bidding (offering) on] a net debit or credit [basis] *price* (in a multiple of the minimum increment) [may execute the order] with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in Rule 1.1(ii)(a) and Rule 1.1(zz)(a) respectively, have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

(c)–(d) No change

* * * Interpretations and Policies

No change

RULE 6.53C COMPLEX ORDERS ON THE HYBRID SYSTEM

(a) Definition: A complex order is any order for the same account as defined below:

1. Spread Order: A spread order is as defined in Rule 6.53(d).

2. Straddle Order: A straddle order is as defined in Rule 6.53(f).

3. Strangle Order: A strangle order is an order to buy (sell) a number of call option contracts and the same number of put option contracts in the same underlying security, which contracts have the same expiration date (e.g., an order to buy two XYZ June 35 calls and to buy two XYZ June 40 puts).

4. Combination Order: A combination order is as defined in Rule 6.53(e).

5. Ratio Order: A spread, straddle or combination order may consist of legs that have a different number of contracts, so long as the number of contracts differs by a permissible ratio.

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 2, CBOE replaced in its entirety the original proposed rule filing. Amendment No. 2 is incorporated into this notice.

For purposes of this section, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

6. Butterfly Spread Order: A butterfly spread order is an order involving three series of either put or call options all having the same underlying security and time of expiration and, based on the same current underlying value, where the interval between the exercise price of each series is equal, which orders are structured as either (i) a ''long butterfly spread'' in which two short options in the same series offset by one long option with a higher exercise price and one long option with a lower exercise price or (ii) a ''short'' butterfly spread'' in which two long options in the same series are offset by one short option with a higher exercise price and one short option with a lower exercise price.

7. Box/Roll Spread Order: Box spread means an aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same aggregate current underlying value, and are structured as either: A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

8. Collar Orders and Risk Reversals: A collar order (risk reversal) is an order involving the sale (purchase) of a call (put) option coupled with the purchase (sale) of a put (call) option in equivalent units of the same underlying security having a lower (higher) exercise price than, and same expiration date as, the sold (purchased) call (put) option.

9. Conversions and Reversals: A conversion (reversal) order is an order involving the purchase (sale) of a put option and the sale (purchase) of a call option in equivalent units with the same strike price and expiration in the same underlying security, and the purchase (sale) of the related instrument.

(b) Types of Complex Orders: Complex orders may be entered as fill-or-kill, immediate or cancel, or as all-or-none orders as defined in Rule 6.53, or as good-'til-cancelled.

(c) Complex Order Book

(i) Routing of Complex Orders: Complex orders will route either to PAR or the Complex Order Book (''COB''), as determined by the appropriate Exchange committee on a class by class basis. All pronouncements regarding routing procedures will be announced to the membership via Regulatory Circular. The appropriate Exchange committee also will determine whether to allow complex orders from non-broker-dealer public customers and from broker-dealers that are not market makers or specialists on an options exchange to route from PAR to the COB.

(ii) Priority of Complex Orders in the COB: Orders from public customers have priority over orders from non-public customers. Multiple public customer complex orders at the same price are accorded priority based on time.

(iii) Execution of Complex Orders in the COB: Complex orders resting in the COB may be executed without consideration to prices of the same complex orders that might be available on other exchanges. Complex orders resting in the COB may trade in the following way:

(1) Orders in the Electronic Book (''EBook''): A complex order in the COB will automatically execute against individual orders or quotes residing in EBook provided the complex order can be executed in full (or in a permissible ratio) by the orders in EBook.

(2) Orders in COB: Complex orders in the COB that are marketable against each other will automatically execute.

(3) Market participants, as defined in CBOE Rule 6.45A, may submit orders to trade against orders in the COB. The allocation of complex orders among market participants shall be done pursuant to CBOE Rule 6.45A(c).

(iv) Complex orders in the COB may be designated as day orders or good-til-cancelled orders. Only those complex orders with no more than four legs and having a ratio of one-to-three or lower, as determined by the appropriate Exchange committee, are eligible for placement into the COB.

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 Exchange 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

Complex orders typically involve multiple option orders (which may be coupled with stock) executed simultaneously as part of the same strategy. Currently, these orders route to the PAR terminal in the trading crowd where they are announced to the trading crowd and are traded in open outcry. As an enhancement to the CBOE Hybrid System (''Hybrid''), the Exchange intends to develop a complex order book (''COB''), which will facilitate more automated handling of complex orders.[4] Additionally, the Exchange proposes to adopt a separate complex order rule applicable solely to the Hybrid system.

1. Definitional

Proposed paragraph (a) of CBOE Rule 6.53C is a definitional section. The first five order types in that section (spread order, straddle order, strangle order, combination order, and combination order with non-equity option legs) are defined in other CBOE rules (most notably CBOE Rule 6.53, Certain Types of Orders Defined) but for ease of reference, the Exchange includes them in this new rule. The next four order type definitions (ratio order, butterfly spread order, box/roll spread order, collar order) are new but are substantially identical to those contained in International Securities Exchange, Inc. (''ISE'') Rule 722(a)(6–9). The last order type definitions are for conversions and reversals, which are a type of stock-option order as defined in CBOE Rule 1.1(ii). They are included here merely for ease of reference.

2. Complex Order Book

A. Routing Complex Orders: Proposed paragraph (c) governs the COB. Proposed paragraph (i) governs routing and provides that the appropriate Exchange committee will determine whether complex orders should route to PAR or the COB on a class by class basis. Anytime the committee changes or amends its routing procedures, it will announce such changes to the membership via Regulatory Circular. This will provide that all Exchange members will have access to all current information regarding the routing of complex orders.

With respect to the handling of orders that route to PAR, the PAR operator will

[4] This new proposed rule will not apply to complex order trading in non-Hybrid classes.

announce the order to the trading crowd. Any member of the trading crowd will then have the ability to trade the order at the limit price or he/she may offer price improvement. Alternatively, trading crowd members may choose not to trade the order, in which case it will reside on PAR until the PAR operator ''books it.'' If a complex order becomes marketable while it is on PAR, the Exchange sends a notification to the PAR operator. Proposed paragraph (c)(iii) governs execution of orders in the COB and is described below.

As stated in the introductory paragraph of this rule filing, complex orders currently route to, and continue to reside on, PAR until they are traded in open outcry. Accordingly, manual intervention is necessary before complex orders will execute. The proposal enhances the treatment of complex orders by making them eligible for placement into an electronic format (*i.e.*, into the COB). Once these orders rest in the COB, they may trade electronically (as described below), which means that they may trade more quickly than they otherwise may have in an open outcry environment. Moreover, orders residing on PAR are not displayed. When orders are routed into the COB, members with an interface connection to CBOE will have the ability to view complex orders resting in the COB, which enhances transparency. For these reasons, the Exchange believes routing complex orders into the COB will enhance the treatment these orders currently receive and allow the Exchange to compete more effectively for this type of order flow.

Finally, the appropriate Exchange committee also will determine whether to allow complex orders from non-broker-dealer public customers and from broker-dealers that are not market makers or specialists on an options exchange to route from PAR to the COB. Proposed paragraph (c)(iv) provides that only those complex orders with no more than four legs and having a ratio of one-to-three or lower, as determined by the appropriate Exchange committee, are eligible for placement into the COB.

B. Trading Complex Orders: When the PAR operator ''books'' the order, it will route directly into the COB. Once in the COB, the order may trade in one of three ways. If individual orders or quotes in the Exchange's electronic book (''EBook'') ''line-up'' against the legs of the complex order, an automatic execution occurs, provided the complex order can be executed in full (or in a permissible ratio) by the orders in EBook. Second, if a subsequent incoming complex order is marketable against the resting complex order in the COB, it will automatically execute against the resting complex order in the COB upon being ''booked.'' Finally, market participants as defined in CBOE Rule 6.45A will have the ability to submit orders to trade against the order in the COB. Under this option, the complex order in the COB would be allocated to market participants in accordance with the allocation procedures described in CBOE Rule 6.45A(c).[5] Proposed paragraph (c)(iii) provides that complex orders resting in the COB may be executed without consideration to prices of the same complex orders that might be available on other exchanges. This is similar to ISE Rule 722(b)(3).[6]

C. Priority and Complex Orders: This rule filing does not negatively affect the existing priority rules. In this regard, proposed paragraph (c)(ii) explicitly provides that orders from public customers have priority over orders from non-public customers. For example, if members of the trading crowd wish to trade a complex order resting on PAR that is marketable against individual public customer orders in the electronic book, public customers would have priority. Multiple public customer complex orders at the same price are accorded priority based on time. The current complex order priority exception contained in CBOE Rules 6.45 and Rule 6.45A(b)(iii) will continue to be applicable. The complex order priority exception generally states that a member holding a qualifying complex order may trade ahead of the book on one leg of the order provided the other leg of the order betters the corresponding bid (offer) in the limit order book. For example, assume a complex order rests in the COB (priced at a net debit or credit). If this resting complex order was marketable against both legs in EBook, the resting complex order would have already traded automatically. This makes it impossible for a marketable incoming complex order to trade ahead of resting orders in Ebook that are marketable against all legs of the resting complex order. Accordingly, when a marketable incoming complex order trades against a resting complex order, it is only because the resting complex order is at a better price than the orders in Ebook. Finally, because the existing complex order priority rules as written envision open outcry trading, the Exchange makes minor changes to the text such that the rules will be applicable to electronic trading.[7]

Adoption of a complex order rule for Hybrid trading provides a framework for the trading of complex orders on Hybrid. This, in turn, should provide investors with greater certainty in the routing of their complex orders. The Exchange believes that the development of a complex order trading book will provide deeper and more liquid markets for complex orders and will provide order entry firms with a trading platform the exchange believes is more conducive to satisfying their best execution and due diligence obligations with respect to these types of orders.

2. Statutory Basis

For these reasons, 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

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

The Exchange has neither solicited nor received written comments on 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

[5] Interpretations and Policies .01 and .02 to CBOE Rule 6.45A apply to complex orders on the Hybrid System.

[6] The Options Price Reporting Authority does not disseminate complex order prices, which eliminates market participants' ability to know what pricing is available on other exchanges.

[7] As amended, the proposed rule mirrors ISE's complex order priority rule (Rule 722(b)(2)).

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

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

(ii) as to which the CBOE 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–45 and should be submitted on or before December 14, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3284 Filed 11–22–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50671; File No. SR–FICC–2004–08]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Provide Interpretive Guidance to Members Regarding the Criteria Used To Place Members on Surveillance Status

November 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 29, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

FICC is seeking to provide interpretive guidance regarding an approved rule change that amended the criteria used to place members on surveillance status.[2]

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

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

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

FICC is seeking to provide interpretive guidance to members pertaining to the member surveillance rules of the Government Securities Division (''GSD'') and the Mortgage-Backed Securities Division (''MBSD'') of FICC.

1. Background

Prior to the Commission's approval of SR–FICC–2003–03,[4] the GSD had the ability to place a member in a surveillance status class depending on whether the member satisfied one or more of the enumerated financial and operational criteria in the specific class. Upon approval of SR–FICC–2003–03, FICC implemented new criteria for placing members on surveillance. Specifically, all domestic broker-dealers and banks that are GSD netting members and/or MBSD clearing members are now assigned a rating that is generated by entering financial data of the member into a matrix (''Matrix''). Members who receive a low rating are placed on an internal ''watch list'' and are monitored more closely. All other types of netting and clearing members (those who are not domestic banks or broker-dealers) are not included in the Matrix process but are monitored by FICC's credit risk staff using financial criteria deemed relevant by FICC.

2. Clarification of Rules Provisions

In describing the process by which Credit Risk staff would review members and implement the Matrix process, FICC included in SR–FICC–2003–03 several explanatory footnotes. Specifically, in footnotes 2 and 3 of Amendment I of the filing, FICC explained that members would be placed on the Matrix after a thorough review had been performed of various quantitative factors. FICC also stated that members would be evaluated for certain parameter breaks based on applicable monthly or quarterly reports generated by credit risk staff.[5] FICC at

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[10] 17 CFR 200.30–3(a)(12).

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

[2] Securities Exchange Act Release No. 49158 (January 30, 2004), 69 FR 5624 (February 5, 2004) [File No. SR–FICC–2003–03].

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] Supra at 2.

[5] In Amendment I to FICC–2003–03, footnote 2 stated, ''FICC's approach to the analysis of members will be based on a thorough quantitative analysis. A member's rating on the Matrix will be based on factors including (for broker/dealers): Size (total excess net capital), capital, leverage, liquidity and profitability. Banks will be reviewed based on: size, capital, asset quality, earnings and liquidity.'' Footnote 3 stated, ''Members will also be evaluated based on their compliance with certain ''parameter breaks'' which will be determined based on applicable monthly and/or quarterly exception reports generated by Credit Risk. A member may be placed on the Watch List for failure to fall within, for example, prescribed excess net capital, excess