

Amex has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently traded on the Amex. In determining to grant the accelerated approval for good cause, the Commission notes that the underlying Index on which the Select European 50 Index is based (the Dow Jones EURO STOXX 50 Return Index) is a portfolio of highly capitalized and actively traded securities similar to component securities in hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, the Notes will be listed pursuant to existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²² that the proposed rule change, as amended (SR-Amex-2002-40) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46007; File No. SR-BSE-2001-08]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Competing Specialists and the Execution of Directed Agency Orders

May 30, 2002.

I. Introduction

On December 21, 2001, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") 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

related to competing specialists and the execution of directed agency orders. On April 19, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, together with Amendment No. 1, was published for comment in the **Federal Register** on April 26, 2002.⁴ No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend certain sections of its rules related to Competing Specialist Initiative Rules (see BSE Rules, Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*) to allow, under certain conditions, for the altering of priority of specialist/competing specialist principal quotations when orders are directed by a customer to another specialist/competing specialist.⁵ Specifically, the Exchange seeks to add an exception for orders directed to a specialist/competing specialist. The exception will allow the specialist/competing specialist who receives such an order to elect to execute the order for his own account at the same national best bid and offer ("NBBO") price or better than the quotation on the book, if the quotation on the book is for the account of another specialist/competing specialist, or to permit the directed order to execute against the prevailing specialist/competing specialist's quotation.⁶

Furthermore, the Exchange proposes to amend certain other paragraphs of Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*, in order to remain consistent. Namely, the Exchange proposes to amend Paragraph 6 to reflect that all specialist/competing specialists will be responsible for orders directed to him/her. Likewise, the exchange seeks to amend Paragraph 9 to reflect certain Boston Exchange

³ See letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Belinda Blaine, Associate Director, Division of Market Regulation, Commission, dated April 18, 2002 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 45791 (April 19, 2002), 67 FR 20852.

⁵ Under this proposal, all non-directed and Intermarket Trading System ("ITS") orders will continue to be routed according to existing competing specialist rules.

⁶ Where an agency order resides on the book of a specialist/competing specialist and a specialist/competing specialist then receives an executable order routed to him/her, the subsequent agency orders may be price improved by the specialist/competing specialist receiving such order, or permitted to match the resident agency order at the limit price (without price improvement).

Automated Communication and Order Routing Network ("BEACON") system changes, which will update quotations more efficiently, removing the burden from the regular specialist.

III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of section 6(b) of the Act,⁷ in general, and section 6(b)(5) of the Act,⁸ in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

In today's BEACON system, an agency order is automatically routed to the specialist quote in accordance with price/time priority amongst competing specialists if such quote is at the NBBO. This will continue to be the case for all customer orders. However, this rule will now allow the specialist/competing specialist who receives such an order to elect to execute the order for his own account at the NBBO price or better than the quotation on the book, if the quotation is for the account of another specialist/competing specialist, or to permit the directed order to execute against the prevailing specialist/competing specialist's quotation.

Implementation of the proposed rule will enable the order to be routed to the designated specialist and will enable competing specialists to exercise greater control over more of their firm's orderflow and provide price improvement opportunities to their customers over existing specialist proprietary quotations. All ITS transactions and non-directed orders will continue to be routed according to price/time priority, and available for price improvement by exposure to the specialists/competing specialists.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-BSE-2001-08), as amended, is hereby approved.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. 34-46020; File No. SR-CBOE-2002-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to its DPM Membership Ownership Requirement

June 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 19, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 amend Rule 8.85(e) pertaining to the Designated Primary Market-Maker ("DPM") seat ownership requirement. The text of the proposed rule change appears below.

New text is in *italics*; deletions are in [brackets].

Chicago Board Options Exchange, Incorporated Rules

Rule 8.85(e) Requirement to Own Membership. Each DPM organization shall own at least one Exchange membership for each trading location in which the organization serves as a DPM, as determined by the MTS Committee. An Exchange membership shall include a transferable regular membership or a Chicago Board of Trade full membership that has effectively been exercised pursuant to Article Fifth(b) of the Certificate of Incorporation. [A DPM shall be deemed to satisfy this ownership requirement if the DPM or a senior principal of the DPM owns an

Exchange membership. No single] *The same* Exchange membership(s) may not be used to satisfy this ownership requirement for *different* [more than one] DPM organizations or *different trading locations operated by the same DPM organization*. Each DPM shall have until [February 21, 2002] *insert date 90 days from date of SEC approval* to satisfy this ownership requirement, *but each DPM organization must continually own at least one membership until that date.*

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

In its filing with the Commission, 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 CBOE 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

On August 21, 2000, the Commission approved a CBOE rule filing adopting a DPM membership ownership requirement.³ This requirement is contained in Rule 8.85(e). Currently, it provides, among other things, that each DPM must own at least one Exchange membership. It also states that this requirement would be deemed satisfied if the senior principal of the DPM owned the required membership(s). Pursuant to the terms of the rule, DPMs were required to comply with Rule 8.85(e) by February 21, 2002. The Exchange now seeks to modify Rule 8.85(e) to make clear that the requirements of the Rule are applicable to each DPM trading location (as opposed to each DPM organization), and to eliminate the concept that a senior principal can own a membership in place of the DPM organization.

CBOE proposed the seat ownership requirement at roughly the same time it was seeking to convert the entire equity option trading floor to the DPM system. At that time, each CBOE DPM managed only one trading location (trading post) on the CBOE trading floor. Thus, at that time, each DPM trading location would have been subject to the seat ownership requirement. Further, because Rule

8.85(e) does not state that each DPM organization needs to own a membership, Rule 8.85(e) could arguably apply to each DPM trading location on the floor, since for many purposes (including the allocation of option classes) different DPM trading locations managed by the same DPM organization are treated as separate DPMs.⁴ Since that time, there has been a significant consolidation of DPM operations at CBOE resulting in several DPM organizations each operating multiple DPM trading locations on CBOE's floor.

CBOE believes it is more consistent with the Exchange's original intent to modify the rule to make clear that each DPM organization must own at least one Exchange membership for each trading location in which the organization acts as a DPM. Such a change is also consistent with the Exchange's original rationale for these requirements: to contribute toward assuring that DPMs have a long-term commitment to the Exchange given the important functions performed by DPMs and that DPMs are a pivotal component of the Exchange's marketplace.

With respect to the use of the term "trading location," generally, a trading location is meant to be a trading station on CBOE's floor. However, because certain spots on the trading floor are structured in a way that makes it difficult to distinguish the boundaries of a trading station, CBOE proposes that the Exchange's Modified Trading System Appointments Committee ("MTS Committee"),⁵ determine the number of trading locations in which a DPM organization serves as a DPM.

Lastly, in order to simplify the application and enforcement of the DPM membership ownership requirement, CBOE is proposing to eliminate the provision allowing a senior principal of a DPM to own a required membership instead of the DPM organization. As proposed, each DPM organization would be required to own any seats required to be owned under Rule 8.85(e).

2. Statutory Basis

The Exchange believes the proposed rule change will contribute toward assuring that DPMs have a long-term commitment to the Exchange. Accordingly, the Exchange believes the proposed rule change is consistent with

⁴ However, because of the ambiguity in Rule 8.85(e), CBOE has applied the Rule to DPM organizations and not DPM trading locations on the Exchange floor.

⁵ The MTS Committee is the Committee responsible for reviewing and ensuring compliance with Rule 8.85.

¹⁰ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (Order approving File No. SR-CBOE-99-37).