

resulting options position with a short sale in applicable Nasdaq/NM securities as if such security was a designated Nasdaq/NM security. The Floor Official or Order Book Official who is notified of such a transaction must file a report describing the transaction with the Department of Market Surveillance and must provide the market maker with a copy of the report. The market maker, in turn, must maintain a copy of the report to demonstrate the transaction was bid test exempt. The Commission believes that this provision is consistent with the NASD's interpretation regarding hedging activities associated with the facilitation of customer transactions in options and that the procedures for reporting a transaction under the provision will ensure adequate monitoring.<sup>15</sup>

As noted above, Proposed Interpretation .03 will give a market maker organization more flexibility to manage its market making obligations by allowing a nominee of such organization to affect short sales of securities as bid test exempt even though the nominee has not designated such securities as bid test exempt eligible, provided that the securities have been designated bid test exempt eligible by another nominee of the market maker organization, and further provided that the bid test exempt eligible nominee is not present on the trading floor. The Commission believes this is a reasonable provision designed to address instances where a market maker nominee is absent from the trading floor due to illness, personal, or other business. The Commission believes that this provision is consistent with the intent of the market maker exemption to the short sale rule, in that the exemption continues to be limited to those Nasdaq/NM securities which are used to hedge options transactions in the primary classes in which the market maker organization makes markets. The CBOE will monitor the use of this provision pursuant to the short sale exemption surveillance procedures currently in place.<sup>16</sup>

Finally, it should be noted that CBOE Rule 15.10 was approved on a temporary basis, to remain in effect so long as there exists a market maker exemption to the NASD's short sale

rule.<sup>17</sup> Accordingly, the changes approved herein also are being approved for the same temporary period.

#### IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (File No. SR-CBOE-94-38) is approved on a temporary basis, to remain in effect so long as CBOE Rule 15.10 remains in effect.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to a Determination of the Exchange's Office of the Chairman Pursuant to Exchange Rule 4.10(b)(3) That Certain Financial Requirements be Imposed Upon Member Organizations That Clear Options Market Maker Transactions**

January 26, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 22, 1994, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>17</sup> See Securities Exchange Act Release No. 34632, *supra* note 4. If the NASD later amends its short sale rule in a manner that affects the market maker exemption, including its definition, conditions, and requirements, the CBOE and other options exchanges might be required to amend their own companion market maker exemption rules so that market makers may avail themselves of any continued market maker exemption. *Id.*

<sup>18</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>19</sup> 17 CFR 200.30-3(a)(12) (1993).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

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

The CBOE proposes to issue a regulatory circular ("Regulatory Circular") concerning a determination by the Exchange's Office of the Chairman pursuant to Exchange Rule 4.10(b)(3) that certain financial requirements be imposed upon member organizations that clear options market maker transactions.<sup>2</sup>

#### **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 self-regulatory organization 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 self-regulatory organization 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 Regulatory Circular is to inform the Exchange's membership that, acting pursuant to its authority under Rule 4.10(b)(3), the Office of the Chairman has determined that it is necessary to impose certain financial requirements upon Exchange members that clear the transactions of options market makers. The Exchange believes that for such members to continue in business without such requirements has the potential to threaten the financial integrity of Exchange market maker transactions.<sup>3</sup> The Office of the Chairman has determined that the current method of calculating options

<sup>2</sup> The proposed Regulatory Circular is available from the Commission and the CBOE. See *infra* Part IV.

<sup>3</sup> Exchange Rule 4.10(b)(3) provides that the Office of the Chairman may impose additional financial and operational requirements on a member that clears market maker trades when the Office of the Chairman determines that the member's continuance in business without such requirements has the potential to threaten the financial or operational integrity of Exchange market maker transactions. Rule 4.10(b)(7) provides that the Exchange shall file notice with the Commission in accordance with the provisions of Section 19(d)(1) of the Act of all final decisions to impose extraordinary requirements pursuant to Rule 4.10(b)(3). In addition, the Exchange has elected to file the Regulatory Circular as a proposed rule change under Section 19(b)(1) of the Act.

<sup>15</sup> See letter from Richard G. Ketchum, Chief Operating Officer and Executive Vice President, NASD, to David A. Dami, First Vice President & Associate General Counsel, Global Derivatives, Paine Webber, Inc., dated September 13, 1994.

<sup>16</sup> See letter from Patricia Sizemore, Director, Department of Market Surveillance, CBOE, to Francois Mazur, Attorney, Division of Market Regulation, Commission, dated January 25, 1995.