of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of section 2(a)(24), is a majority-owned subsidiary of such person.

2. Rule 3a–1 under the Act deems certain issuers that meet the statutory definition of investment company in section 3(a)(1)(C) of the Act not to be investment companies, provided such issuers meet certain criteria. An issuer can qualify for this exemption only if no more than 45% of its assets consist of, and no more than 45% of its net income is derived from, securities other than, among others, securities of certain companies controlled primarily by the issuer.[1]

3. Applicant represents that it seeks to acquire a majority voting interest in its foreign tele-media ventures or, where such an interest is not permitted under applicable foreign investment laws or is inadvisable for business reasons, seeks to acquire interests that grant it primary control. Applicant asserts that these ownership thresholds are prohibitively large, as applicant often seeks to join with two or three strategic partners in a foreign tele-media venture. Applicant represents that each partner typically desires an interest in, and rights over, the venture that is equal to that of the other partners. Hence, applicant states that its acquisition of a majority interest, or the largest interest, in a foreign tele-media venture is often impossible.

4. Applicant states that it also may participate in a foreign tele-media venture through a ''joint venture,'' in which applicant's interest may not be a ''security'' for purposes of the Act. However, applicant states that whether an arrangement is a joint venture is sometimes difficult to determine.

5. Applicant asserts that the need to structure its participation in foreign tele-media ventures in a manner that complies with the Act has resulted in severe constraints on its ability to operate effectively and efficiently and grow its business. Applicant states that if it is unable to obtain either a majority interest or primary control for purposes of section 3(a)(1)(C) or rule 3a–1, or a degree of control that will allow it to obtain an opinion of counsel that it can classify its participation as a joint venture interest, then applicant most likely will abstain from participating in that foreign tele-media venture.

6. Applicant also states that as ventures grow out of the development stage, they will often seek to expand their businesses through acquisitions, or will seek public financing. Applicant notes that these goals are often in direct conflict with the need of applicant to maintain its ownership interest at a level that permits such interest to be classified as a non-investment security. Applicant submits that this has resulted in serious delays in the development of certain of applicant's foreign tele-media ventures, as applicant seeks to structure transactions around the requirements of the Act. Applicant states that at times, especially when applicant's interest would fall below the level of presumptive control set forth in section 2(a)(9) of the Act, applicant has denied a foreign tele-media venture permission to undertake a transaction that would have been in the best interests of applicant and that venture.

7. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant requests an order under section 6(c) to permit applicant and the other Covered Entities to engage, directly or through subsidiaries, in foreign tele-media ventures without being subject to the provisions of the Act.

8. Applicant believes that the requested relief is necessary and appropriate in the public interest. Applicant states that its business does not entail the types of risk to public investors that the Act was designed to eliminate or mitigate. Applicant asserts that its assets cannot be characterized as liquid, mobile, and readily negotiable, or as large liquid pools of funds. Applicant represents that it does not acquire securities for the purpose of disposing of them from time to time at a profit. Applicant also states that it is not a so-called ''special situation'' investment company; that is, a company that takes a controlling position in other issuers primarily for the purpose of making a profit in the sale of the controlled company's securities. Applicant states that rather, it is a holding company that participates in foreign tele-media ventures as a strategic investor. Applicant states that in doing so, it acquires a substantial interest and participates in the development of its foreign tele-media ventures by providing active developmental assistance.

9. Applicant believes that the requested relief is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant believes that the requirements of its business, its strategy of directly or indirectly acquiring substantial interests in foreign tele-media companies and tele-media partnerships, and its representation that each Covered Entity will provide active developmental assistance to its foreign tele-media ventures demonstrate that applicant is not the type of entity and does not engage in the type of activities that the Act was designed to regulate.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. No Covered Entity that seeks to rely on the exemptive order will hold itself out as being engaged in the business of investing, reinvesting, or trading in securities.

2. Each Covered Entity may rely on the exemptive order only if the manner in which it is involved in foreign tele-media ventures is, in all material respects, consistent with that described in the application.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–23004 Filed 8–28–97; 8:45 am]

BILLING CODE 8010–01–M

[1] ''Primary control'' under rule 3a–1 means a degree of control that is greater than that of any other person. *See* Health Communications Services, Inc. (pub. avail. Apr. 26, 1985).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38962; File No. SR–CBOE–97–36]

Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Related to the Procedures Regarding Opening Rotations

August 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 25, 1997, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. § 78s(b)(1) (1994).

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

The CBOE proposes to amend CBOE Rule 24.7 regarding the conditions under which the Exchange may halt trading in a class of index options and may resume trading after such a halt. The text of the proposed rule change is below. Additions are italicized; deletions are bracketed.

Chapter XXIV—Index Options

Rule 24.7 Trading halts or Suspensions

(a) Trading on the Exchange in an index option shall be halted whenever two floor officials, in consultation with a designated senior executive officer of the Exchange, shall conclude in their judgment that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the facts that may be considered are the following:

(i) *the extent to which trading is not occurring in stocks underlying the index;* [trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;]

(ii) through (iv)—No Change.

(b) Trading in options of a class or series that has been the subject of a halt or suspension by the Exchange may resume if two floor officials, in consultation with a designated senior executive officer of the Exchange determine that [the conditions which led to the halt or suspension are no longer present or that] the interests of a fair and orderly market are served by a resumption of trading. *Among the factors to be considered in making this determination are whether the conditions which led to the halt or suspension are no longer present and the extent to which trading is occurring in stocks underlying the index.* [In either event, the reopening rotation may not begin until the Exchange has determined that trading in underlying stocks whose weighted value represents more than 50% of the index value is occurring.]

(c) See also Rule 6.3B for the effect of *the initiation of a marketwide trading halt commonly known as a circuit breaker on the New York Stock Exchange* [activation of circuit breakers in the underlying primary securities markets].

(d)—No change.

* * * Interpretations and Policies

.01—No change.

.02—Upon reopening, a rotation shall be held in each class of index options unless two floor officials, in consultation with a designated senior executive officer of the Exchange, conclude that a different method of reopening is appropriate under the circumstances, including but not limited to, no rotation, an abbreviated rotation or any other variation in the manner of the rotation.

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 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

The purpose of the proposed rule change is to eliminate certain fixed percentage tests that presently apply both to the decision to halt or suspend trading in index options and to the decision to resume trading after such a halt, as well as to make certain related changes to conform to present practice.

a. Trading Halts

Under present Rule 24.7(a)(i), one of the enumerated factors that the designated Exchange representatives may consider, in deciding whether to halt trading in an index option, is whether trading has been halted or suspended in underlying stocks whose weighted value represents ''20% or more of the index value.'' By specifying a percentage level that ''may be considered,'' the present rule may imply that it would be improper for the designated Exchange officials to consider trading interruptions in underlying stocks that collectively represent *less than* 20% of the index level. Moreover, the present rule may imply that the Exchange actually must make ongoing calculations of the extent to which underlying stocks are trading at any particular moment—something that would be difficult to do on a real time basis for some indexes, such as those with a large number of constituent stocks (*e.g.*, the Russell 2000, which consists of 2000 stocks) or those as to which data on trading halts is not readily available (*e.g.*, NDX, an index based on over-the-counter stocks).

In fact, these interpretations would conflict with the purpose of Rule 24.7, which grants designated Exchange representatives the discretion to halt index option trading whenever they ''conclude in their judgment that such action is appropriate in the interests of a fair and orderly market and the protection of investors.'' Rule 24.7(a)(i)–(iv) contains simply a *non-exclusive* list of factors that those Exchange officials may consider in exercising that discretion, so it would be inappropriate to appear to forbid those officials from considering trading disruptions in underlying stocks that fall below a predetermined level. Accordingly, the proposed change to Rule 24.7(a)(i) would clarify that Exchange officials, in evaluating whether to halt trading in index options, are not limited to situations in which 20% of the underlying stocks have halted, but rather may consider ''the extent to which'' trading is not occurring in the underlying stocks.

For similar reasons, the proposed change to Rule 24.7(a)(i) also would enable Exchange officials to consider not just whether trading in underlying stocks has been ''halted or suspended,'' but whether such trading is ''not occurring.'' The term ''halted or suspended'' implies a situation in which a stock exchange has taken formal action to stop trading in a stock. However, in deciding whether to continue trading a derivative instrument like an index option, Exchange officials should be able to consider the extent to which underlying stocks are not trading, whether trading is not occurring because of formal exchange action, system problems, market emergencies or some other cause. Accordingly the proposed change to Rule 24.7(a)(i) would make clear that Exchange officials, in evaluating whether to halt index option trading, may consider the extent to which ''trading is not occurring''in the underlying stocks, without limiting that consideration to formal halts or suspensions.

b. Resumption of Trading After Trading Halts

The proposed rule change also is designed to eliminate any requirement in Rule 24.7(b) that a fixed percentage of underlying stocks must be trading before trading in index options may resume after a trading halt. At present, Rule 24.7(b) allows such trading to resume when the appropriate Exchange officials determine either that the conditions that led to the halt no longer are present or that the interests of a fair orderly market are served by a resumption of trading. However, Rule 24.7(b) provides that in no event may trading resume until the Exchange has determined that trading is occurring in underlying stocks whose weighted value represents more than 50% of the index value.

It is and would remain CBOE's practice, in deciding whether to resume

trading after an index options trading halt, to assess the extent to which underlying stocks are trading. However, it is inappropriate to forbid such a resumption until the level of stock trading has reached some predetermined, fixed level, particularly since it often may be difficult to make a precise determination about the weighted value of the underlying stocks that are trading—*e.g.*, for indexes that are composed of a large number of underlying stocks. Accordingly, the proposed rule change would eliminate the 50% threshold and instead would specify that one of the factors that Exchange officials may consider, in determining whether the ''interests of a fair and orderly market are served by a resumption of trading'' is ''the extent to which trading is occurring in stocks underlying the index.'' The proposed rule therefore would enable Exchange officials to reactivate trading as soon as they determine that conditions warrant, without interposing an artificial barrier that might result from a fixed percentage test, and would still provide a mechanism by which CBOE officials would be able to give appropriate weight to the extent to which underlying stocks are trading.

In addition, the proposed rule change would make clear that trading may resume only upon a determination by the designated Exchange officials that such a resumption is in the interests of a fair and orderly market. The present form of Rule 24.78 allows trading to resume (subject to the 50% requirement) when the proper Exchange officials determine *either* that the conditions that led to the halt no longer are present *or* that a resumption of trading would serve the interests of a fair and orderly market. Taken literally, this would enable trading to resume if the conditions that led to the halt no longer are present, even if a resumption of trading would be contrary to the interests of a fair and orderly market, an interpretation that would conflict with CBOE's practice and would be contrary to the policies under the Act. Accordingly, the proposed rule change would make clear that: (1) index option trading may resume if and only if the proper Exchange officials determine that such a resumption would be in the interests of a fair and orderly market; and (2) the fact that the conditions leading to the halt no longer are present is just one of the factors (as is the extent to which underlying stocks are trading) that those officials may consider in determining whether the interests of a fair and orderly market would be served by a resumption of trading. In SR–CBOE–97–35, similar changes are being proposed to Rule 6.3(b), which generally governs the resumption of trading after a trading halt in an equity option.

Also, the proposed rule change conforms the cross reference to Rule 6.3B that is contained in Rule 24.7(c) to the current language of Rule 6.3B. Rule 6.3B is the Exchange's circuit breaker trading halt rule, and the language of Rule 6.3B was recently amended.

Finally, the proposed rule change adds a proposed interpretation .02 to address how trading shall resume after a trading halt. This topic is not addressed in the present form of Rule 24.7, although the last sentence of present Rule 24.7(b) apparently assumes that a rotation will be used. The proposed interpretation .02 would adopt the identical procedure that now governs the resumption of trading after a circuit breaker halt, which is set forth in interpretation .02 to Rule 6.3B. In particular, proposed interpretation .02 to Rule 24.7 would provide that trading would resume by a rotation after a trading halt unless the designated exchange officials conclude that a different method of reopening is appropriate under the circumstances. Under the proposed interpretation, those officials, among other things, could determine not to employ a rotation, to use an abbreviated rotation or otherwise to vary the manner of the rotation. This proposed interpretation should be adopted so that comparable rules govern the resumption of trading after circuit breaker halts as well as halts for other reasons.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[2] in that the proposed rule change is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by setting forth a procedure to review and address delays in the commencement of options trading.

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

CBOE does not believe that the proposal 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 proposal.

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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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 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 CBOE. All submissions should refer to File No. SR–CBOE–97–36 and should be submitted by September 19, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–23010 Filed 8–28–97; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. § 78f(b)(5).

[3] 17 CFR 200.30–3(a)(12)(1997).