

Exchange may only impose additional margin under CBOE Rule 12.10 when these thresholds are reached. Amendment No. 3 clarifies that the Exchange may impose additional margin as it deems necessary. The Commission also believes that narrowing the elimination of position and exercise limits to FLEX options on the SPX, OEX, and DJX, rather than all FLEX broad-based index options is appropriate because it is more restrictive than the original proposal and it will allow the Exchange to focus initially on a smaller number of accounts maintaining positions in FLEX SPX, OEX and DJX options. Amendment No. 3 also appropriately clarifies when the CBOE will provide the Commission with a report concerning the impact of the pilot program. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1, 2 and 3, including whether the proposal 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. 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 inspecting and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-98-23 and should be submitted by February 22, 1999.

V. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-CBOE-98-23) is approved, as amended, on a two-year pilot basis until January 22, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40973; File No. SR-CBOE-98-55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees for CBOT Exercisers.

January 25, 1999.

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 December 30, 1998, 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 Exchange. On January 13, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested person.

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

The CBOE proposes to amend certain fees so that these fees are charged to Chicago Board of Trade ("CBOT") exercise members of CBOE in the same manner that they are charged to other CBOE members. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

²⁶ 17 CFR 200.30-3(a)(12).

¹ 17 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Richard Strasser, Assistant Director, SEC, dated January 12, 1999. ("Amendment No. 1"). In Amendment No. 1, CBOE described the amount of CBOE dues and the technology fee which the rule change imposes on CBOT Exercisers. Additionally, CBOE summarized the fee waiver provisions of CBOE Rule 3.16(c) and the Agreement entered into on September 1, 1992, between the Chicago Board of Trade and CBOE.

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 statement 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 this proposed rule change is to amend certain fees so that these fees are charged to CBOE members that are also members of the CBOT ("CBOT Exercisers") in the same manner they are charged to the other CBOE members.

Article Five(b) of the CBOE Certificate of Incorporation provides that:

[E]very present and future member of the [the Board of Trade of the City of Chicago] who applies for membership in the [CBOE] and who otherwise qualifies shall, so long as he remains a member of said Board of Trade, be entitled to be a member of the [CBOE] notwithstanding any such limitation on the number of members and without the necessity of acquiring such membership for consideration or value from the [CBOE], its members, or elsewhere. Members of the [CBOE] admitted pursuant to this paragraph (b) shall, as a condition of membership in the [CBOE], be subject to fees, dues, assessments and other like charges, and shall otherwise be vested with all rights and privileges and subject to all obligations of membership, as provided in the by-laws.

CBOE Rule 3.16(c) further provides that for the purpose of entitlement to membership on the CBOE in accordance with Article Fifth(b), the term "member of the Board of Trade of the City of Chicago" is interpreted to mean an individual who is either an "Eligible CBOT Full Member" or an "Eligible CBOT Full Member Delegate" as those terms are defined in the Agreement entered into on September 1, 1992, between CBOT and CBOE ("1992 Agreement"), and shall not mean any other person.

On February 12, 1988, CBOE and CBOT entered into a Joint Venture Agreement ("JV Agreement"). The JV Agreement provided, among other things, that the CBOE would waive dues in a given quarter for CBOT Exercisers who made no trades in CBOE contracts

²⁵ 15 U.S.C. 78s(b)(2).

for the immediate previous quarter and that the access/exerciser fee for CBOT Exercisers would be zero for the duration of the joint venture. The JV Agreement terminated on December 29, 1998. As a result, CBOE dues will no longer be waived for CBOT Exercisers who make no trades in CBOE contracts in the immediate previous quarter, and all CBOT Exercisers will be charged CBOE dues to the same extent that other CBOE members are charged CBOE dues. Accordingly, each person who is an effective CBOT Exerciser member of CBOE at the end of the first business day of a calendar quarter will be charged the applicable CBOE dues for that quarter.⁴

Similarly, the CBOE technology fee will no longer be waived for CBOT Exercisers who make no trades in CBOE contracts in the immediate previous month. As a result, each person who is an effective CBOT Exerciser member of CBOE at the end of the first business day of a month will be charged the technology fee for that month.⁵ CBOE began assessing dues and the technology fee to CBOT Exercisers on January 4, 1999.

Due to the termination of the JV Agreement, the CBOE membership application fees will also no longer be waived for CBOT Exercisers. Accordingly, commencing on December 29, 1998, each CBOT Exerciser membership applicant will be charged CBOE membership application fees to the same extent that other CBOE membership applicants are charged CBOE membership application fees. These membership application fees include, but are not limited to, the \$2,000 fee for new membership applicants and the \$100 renewal/change of status fee. These amendments to CBOE's membership application fees will be incorporated into CBOE's Membership Fee Circular.

Prior to the JV Agreement, CBOT Exerciser applicants were charged a \$500 CBOT Exerciser application fee. Because CBOT Exerciser applicants will now be charged the same membership application fees as other CBOE membership applicants, the \$500 CBOT Exerciser application fee will be eliminated.

⁴ Amendment No. 1 states that CBOE dues are currently \$625.00 per quarter, subject to a 25% discount if CBOE average daily volume on a fiscal year-to-date basis ("ADV") is between 800,001–850,000 contracts, a 50% discount if CBOE ADV is between 850,001–875,000 contracts, a 75% discount if CBOE ADV is between 875,001–900,000 contracts, and a 100% discount if CBOE ADV exceeds 900,000 contracts. See note 3, *supra*.

⁵ According to Amendment No. 1, the technology fee is \$200.00 a month. See note 3, *supra*.

The Exchange believes that it is appropriate to charge CBOT Exerciser applicants the same membership application fees as other CBOE membership applicants because CBOT Exerciser applications require the same staff resources and effort to process as applications submitted by other CBOE membership applicants. Finally, it should be noted that this rule filing is not intended to affect the fee waiver provisions that are set forth in the 1992 Agreement and Rule 3.16(c).⁶

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)⁷ of the Act in general and furthers the objectives of Section 6(b)(4)⁸ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.⁹

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

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

The foregoing rule change, which establishes or changes a due, fee, or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A) of the Act¹⁰ and subparagraph (e)(2) of Rule 19b–4 thereunder.¹¹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

⁶ Amendment No. 1 explains that Rule 3.16(c) and the 1992 Agreement provide for CBOE to waive all membership dues, fees, and other charges and all qualification requirements, other than those imposed by law, in order to permit Eligible CBOT Full Members and Eligible CBOT Full Member Delegates to participate in certain CBOE offers, distributions, and redemptions defined by the 1992 Agreement. See note 3, *supra*.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ In reviewing the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b–4(e)(2).

or otherwise in furtherance of the purposes of the Act.

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. 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 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–55 and should be submitted by February 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40971; File No. SR–CBOE–98–11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Adjustments in Market Maker Equity

January 25, 1999.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b–4 thereunder,² the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange

¹⁷ CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.