assets, and the Contract owner has not been deprived of a proportionate share of the Variable Account's assets because his or her interest in the Bonus amount has not vested.

16. In addition, Applicants assert that permitting a Contract owner to retain a 2% Bonus under a New Contract upon the exercise of the right to cancel during the free look period would not only be unfair, but would also encourage individuals to exchange into a New Contract with no intention of keeping it and returning it for a quick profit. The amounts recaptured equal the 2% Bonus provided by Sun Life from its general account assets, and any gain would remain a part of the Contract owner's Account Value. In addition, the amount the Contract owner receives in the circumstances where the 2% Bonus is recaptured will always equal or exceed the surrender value of the New Contract.

17. Applicants submit that the provisions for recapture of the 2% Bonus under the New Contract does not violate sections 2(a)(32) and 27(i)(2)(A) of the Act. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of the 2% Bonus under the circumstance described in the Application with respect to the New Contract, without the loss of relief from section 27 provided by section 27(i).

18. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

19. Sun Life's recapture of the 2% Bonus might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Account. Applicants contend, however, that the recapture of the Bonus does not violate section 22(c) and Rule 22c–1. Applicants argue that the recapture of the 2% Bonus does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (a) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (b) other unfair results, including speculative trading practices. The proposed recapture of the 2% Bonus does not pose such a threat of dilution. To effect a recapture of the 2% Bonus, Sun Life will redeem interests in a Contract owner's Contract at a price determined on the basis of the current net asset value of that Contract. The amount recaptured will equal the amount of the 2% Bonus that Sun Life paid out of its general account assets. Although the Contract owner will be entitled to retain any investment gain attributable to the 2% Bonus, the amount of that gain will be determined on the basis of the current net asset value of the Contract. Thus, Applicants state that no dilution will occur upon the recapture of the 2% Bonus. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the 2% Bonus.

20. Applicants argue that Section 22(c) and Rule 22c–1 should not apply because neither of the harms that Rule 22c–1 was meant to address are found in the recapture of the 2% Bonus. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the 2% Bonus under the New Contract.

Conclusion

For the reasons summarized above, Applicants submit that the Exchange Offer is consistent with the protections provided by Section 11 of the Act and that approval of the terms of the Exchange Offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants further submit that their request for exemptions from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder meet the standards set out in Section 6(c) of the Act. Applicants submit that the requested order should therefore be granted.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–443553; File No. SR–CBOE–2001–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Exempt Certain Deep-in-the-Money Options Transactions From the Exchange Marketing Fee

May 25, 2001.

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 April 10, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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.

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

The CBOE proposes to make a change to its marketing fee to exempt call/put ''combo'' transactions from the fee. The text of the proposed rule change is available at the CBOE and at the Commission.

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.

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

[2] 17 CFR 240.19b-4.

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

1. Purpose

Last year CBOE imposed a $.40 per contract marketing fee to collect funds that the appropriate Designated Primary Market Maker (''DPM'') may use for marketing its services and attracting order flow to the CBOE.[3] Initially, this fee was applicable to all market-maker to market-maker options transactions. Thereafter, the Exchange determined that the fee was making it unprofitable for market makers to do reversal and conversion transactions, in which a market maker trades a given amount of an underlying security against an equivalent number of call/put ''combos'' through buying the call and selling the put (or vice versa) in equal quantities with the same strike price in the same expiration month. The Exchange therefore amended its marketing fee to waive the fee in the case of call/put combo transactions used in reversals and conversions.[4]

The Exchange is now filing this rule change proposal to exempt certain ''spreads'' [5] as well as ''by write'' and ''synthetic'' transactions [6] involving ''deep in the money'' [7] options. In the CBOE's view, these transactions, like reversals and conversions, enable popular trading strategies that contribute to market liquidity, but they usually have smaller profit margins than other types of trades. The CBOE believes that, when the $.40 marketing fee is imposed upon the call/put combo transactions, the trades may become unprofitable.

Consequently, the Exchange has decided to exempt from the marketing fee all buy-write and synthetic transactions involving at least 200 deep-in-the-money options contracts for a particular class, as well as spread transaction involving a total of at least 400 deep-in-the-money option contracts for a particular class. The Exchange will use trade data to determine qualifying transactions, and may require market makers to submit documentation showing that specific trades qualify for the exemption.

2. Statutory Basis

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

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

The CBOE 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 CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 thereunder [11] because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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, 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 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 20549–0609. 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 such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2001–18 and should be submitted by June 26, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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[3] *See* Securities Exchange Act Release No. 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000) (SR–CBOE–2000–28).

[4] *See* Securities Exchange Act Release No. 44095 (March 23, 2001), 66 FR 17459 (March 30, 2001) (SR–CBOE–2001–09).

[5] For purposes of this filing, the term ''spread''means an options transaction involving the simultaneous purchase and/or sale of one or more contracts of at least two different series of the same class of options (*i.e.,* options covering the same underlying security), which transaction is executed at limit or market prices on the floor of the Exchange. E-mail from Chris Hill, Attorney, CBOE, to Cyndi Nguyen, Attorney, SEC, dated May 18, 2001.

[6] In a ''buy write,'' a market maker buys stock and sells calls of a given series in a 1-to-1 ratio, creating the equivalent of a sale of puts of the same series. A ''synthetic'' is the opposite: The market maker sells stock and buys calls in a 1-to-1 ratio, creating the equivalent of a purchase of puts of the same series.

[7] For purposes of marketing fee waivers, the CBOE defines ''deep in the money'' options as options that are ''in the money'' by a minimum of both $10 and 20% of the closing value of the underlying security on either the trade date or the date immediately prior to the trade date.

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

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44365; File No. SR–NASD–2001–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Elimination of the Interval Delay Between Executions in the Nasdaq National Market Execution System and the Effect of Odd-Lot Orders on Market Makers' Displayed Quotations in the Nasdaq National Market Execution System

May 29, 2001.

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 May 10, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary,

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

[2] 17 CFR 240.19b–4.