

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 comments on the proposed rule change.

### **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 self-regulatory organization 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, 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 20549-0609. 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 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-BSE-2001-01 and should be submitted by July 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority<sup>14</sup>.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-44469; File No. SR-CBOE-2001-25]**

### **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 Marketing and Administrative Fees**

June 22, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (Act)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 21, 2001, the Chicago Board Options Exchange, Inc. (CBOE) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items the CBOE has prepared. The CBOE submitted Amendment No. 1 to the proposed rule change on June 18, 2001. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

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

The CBOE proposes to pay interest on the funds collected through its marketing fee program, to obtain the authority to refund periodically the excess collected balances in the marketing fee accounts, and to assess an administrative fee, effective July 1, 2001, to cover the costs of implementing these steps and to offset the overall cost of administering the marketing fee program. The text of the proposed rule change is available at the principal offices of 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.

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

In August 2000, the CBOE instituted a marketing fee program that imposed a \$.40 per contract marketing fee on various options transactions executed on the CBOE. Under the plan, the proceeds from the fee were to be used by the appropriate Designated Primary Market Maker ("DPM") for marketing its services and attracting order flow to the CBOE.<sup>3</sup> The funds have been placed in separate accounts for each DPM according to the class of options involved in each transaction in which the fee was imposed. The fees collected in a particular class of option are applied only to the marketing expenses applicable to that class of option.

At times, some accounts have taken in more money than the DPMs have chosen to spend for marketing. The CBOE wishes periodically to refund account balances of \$50 or more to those who contributed the fees. Moreover, in collecting these fees over the last nine months, the CBOE has found that the proceeds from the fee are typically received into separate DPM accounts and kept there for at least several days before the DPM uses them. At the request of the association representing the CBOE's DPMs, the CBOE has determined to credit the accounts with interest earned from the collected funds. Finally, effective July 1, 2001, the CBOE intends to impose a monthly \$10,000 administrative fee to fund the implementation of these steps and to offset the overall costs related to its marketing fee program.

The CBOE proposes periodically to refund proceeds collected through the marketing fee program that exceed a specific percentage of the amounts collected in the previous three months. The refunds would be made on a *pro rata* basis to the market makers that contributed the funds. Currently, the CBOE anticipates refunding account balances that exceed 15% of the amount collected in each account from February 1, 2001 through April 30, 2001. The CBOE also proposes to implement any

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 43112 (August 3, 2000) 65 FR 49040 (August 10, 2000) (File No. SR-CBOE-2000-28).

future refunds in similar fashion, if and when the circumstances warrant. Recommendations as to the specific timing and amounts of any future refunds would be made by the CBOE's Financial Planning Committee, subject to approval by the Board of Directors.

In order to reduce the costs and administrative burdens placed upon the CBOE and the clearing firms in processing refunds, the CBOE would not issue refunds of less than \$50. The CBOE believes that the cost of processing refunds of such small amounts would likely exceed the value of the refunds.

The CBOE also proposes to credit interest to the DPM accounts retroactively from the beginning of the marketing fee program, based on the average daily balance of each DPM account and the interest rate (currently about 5.5%) that the CBOE earns on its own excess cash.

In addition, effective July 1, 2001, the CBOE proposes to impose a monthly \$10,000 administrative fee to cover its costs of administering the marketing fee program and the refund program. The monthly \$10,000 administrative fee would be divided among the accounts of the various DPM stations trading equity options (currently numbering approximately 68). Under the proposal, each DPM would be assessed its *pro rata* share of the monthly \$10,000 administrative fee, which would be offset against the amount of interest the CBOE will pay to each DPM account. The CBOE believes that this procedure will ensure that the fee is imposed on each DPM account fairly, based on each account's relative size.

The CBOE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> 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 not necessary or appropriate in furtherance of 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**

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the CBOE, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(2) thereunder.<sup>7</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 proposed rule change is consistent with the Act. Persons making written submissions should fix 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 the filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number SR-CBOE-2001-25 and should be submitted by July 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44478; File No. SR-CBOE-2001-10]

### **Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Adopting Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange**

June 27, 2001.

#### **I. Introduction**

On March 13, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change adopting formal procedures for members to submit proposals to list option classes on the Exchange. The **Federal Register** published the proposed rule change for comment on April 17, 2001.<sup>3</sup> The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 to the proposed rule change on May 25, 2001.<sup>4</sup> This order approves the proposed rule change and grants accelerated approval to Amendment No. 1. The Commission also is soliciting comment on Amendment No. 1 to the proposed rule change.

#### **II. Description of Proposal**

The proposed rule change would adopt formal procedures for members to submit proposals to list option classes on the Exchange, and would codify the factors considered by the Exchange in listing option classes.<sup>5</sup> The proposed

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 44173 (April 10, 2001), 66 FR 19819.

<sup>4</sup> See letter from Angelo Evangelou, Legal Division, CBOE, to Sonia Patton, Attorney, Division of Market Regulation, Commission, dated May 24, 2001 ("Amendment No. 1"). Amendment No. 1 revises Interpretation and Policy .07 to CBOE Rule 5.3 to clarify that when the Exchange relies upon other bona fide business considerations in denying or placing conditions or limitations upon a member listing proposal, the Exchange must provide the member with a written response specifying that the Exchange has relied upon other bona fide business considerations, in addition to maintaining a record of the bona fide business considerations supporting its decision.

<sup>5</sup> As part of a settlement of an enforcement action by the Commission, four of the options exchanges, including the CBOE, are required to adopt rules to codify listing procedures to be carried out when a

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).