

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 in Washington, D.C. 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-Amex-98-31 and should be submitted by September 8, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-Amex-98-31), as amended, is approved.

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. 34-41727; File No. SR-CBOE-99-39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Market-Maker Surcharge Fee Schedule

August 11, 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 July 23, 1999, 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 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 is proposing to make changes to its fee schedule pursuant to

CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage*.³

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 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 Section 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

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee ("Committee") approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract) ⁴
For Motor Company (F)	\$0.14	\$0.00

⁴ The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from \$0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

The fee for Ford Motor Company will be effective as of August 2, 1999. All of the fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)⁵ of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

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 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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)⁶ of the Act and

subparagraph (f)(2) of Rule 19b-4 thereunder.⁷ 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 is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁸

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 with the

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-39 and should be submitted by September 8, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41732; File No. SR-CBOE-99-30]

August 11, 1999.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Elimination of the Prohibition Against Market-Maker Surcharges on Single-List Issues

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 June 23, 1999, 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 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 amend CBOE Rule 2.40, *Market-Maker Surcharge for*

Brokerage, to eliminate the restriction against a surcharge from being assessed on trades in classes not traded on another options exchange. The text of the proposed rule change is available at the Office of the Secretary, 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 a and statutory 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 Exchange 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 Exchange recently received approval from the Commission to assess a surcharge on market-makers trading in multiply-listed classes pursuant to new CBOE Rule 2.40.³ The Exchange believes CBOE Rule 2.40 will enable the Exchange to compete for order flow more effectively against other options exchanges.

In this present filing, the Exchange proposes to eliminate a restriction in paragraph (e) of CBOE Rule 2.40 which prohibits a surcharge from being assessed on trades in classes not traded on another options exchange. When the Commission approved Exchange Rule 2.40 recently, the Commission stated that it believes "that the proposed rule change, as amended, is a reasonable effort by CBOE to better enable its competitive market-maker crowds to compete for multiply-listed options with other exchanges that employ a specialist system."⁴ While the Exchange agrees that the proposed rule provides the Exchange with the tools to compete more effectively in attracting order flow in multiple list issues, the Exchange believes CBOE Rule 2.40 would be more effective and useful if the restriction against imposing a surcharge on single-list issues was eliminated.

The Exchange believes CBOE Rule 2.40 would be more effective by

eliminating this restriction,⁵ because specialists on other exchanges, who may trade both single-list and multiple-list issues, have greater flexibility than CBOE market-makers currently having using CBOE Rule 2.40 to adjust their transaction fees. Specifically, these specialists are able to seek to attract customer loyalty and a larger portion of their order flow in the multiple-listed issues by reducing fees and charges not just for those multiple-listed classes, but also for the single-list classes. Consequently, the Exchange will find it more and more difficult to compete for order flow in multiple-listed issues—even with Exchange Rule 2.40 in place—as long as specialists are able to entice firms to send order flow to them by more broadly reducing their fees, to include their single-list issues. The elimination of the single-list prohibition will allow the Exchange to provide the surcharge to floor brokers (thereby inducing a reduction in their brokerage rates on customer orders) and/or to reduce the book brokerage rate in single-list issues which will expand the benefit of this program and the potential benefit to customers.

In requesting the Exchange to revise its original proposal to limit the surcharge to multiple-listed issues only, the Exchange is aware that the commission believed that competition among exchanges in the multiple-listed classes would obviate the risk that the spreads in these classes would not be widened to compensate for the cost of market-makers of any surcharges. As the need for the proposed rule change makes clear, that same rationale extends to single-list classes, since the overall competition for order flow encompasses all issues, whether single- or multiple-list. Moreover, the Exchange believes that current safeguards in CBOE Rule 2.40 will protect against a widening of the spreads on the single-list issues which become subject to a surcharge. Specifically, the cap on the surcharge amount of \$0.25/contract should help to ensure that spreads are not widened in the single-list issues.⁶ Of course, the Exchange is also obligated to analyze data comparing spreads before and after the imposition of the surcharge so any

⁵ The Exchange added the prohibition against imposing the surcharge on single list issues at the suggestion of Commission staff.

⁶ As the Exchange noted in Amendment No. 1 to SR-CBOE-98-35 (dated February 26, 1999), the minimum bid-ask spread for the option class is \$6.25 (one sixteenth of a dollar (\$0.0625) times a multiplier of 100 since one option contract represents 100 shares of stock) although the actual spread for many options is wider. (Given that the spread is usually at \$6.25 or greater, the Exchange believes it is unlikely that spreads would be adjusted to account for a surcharge of \$0.25 or less.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 1123 (March 9, 1999).

⁴ *Id.*, 64 FR at 11525.