

interest to make the proposed rule change operative upon filing.

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 the furtherance of the purposes of the Act.¹⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-99-34 and should be submitted by October 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41856; File No. SR-CBOE-99-49]

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

September 10, 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 August 31, 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 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

Pursuant to CBOE Rule 2.40, on August 30, 1999, the Equity Floor Procedure Committee ("Committee") approved the following fees for the option classes listed in the chart below. The Order Book Official Brokerage Rate

(per contract) shall be set at \$.00 for these option classes.⁴

Option class	Market-maker surcharge (per contract)
EMC Corporation (EMC)	\$0.15
Eastman Kodak Co. (EK)	0.15
Merck & Co., Inc. (MRK)	0.10

These fees will be effective as of August 31, 1999. Exchange rules provide that an option be listed for trading on another exchange before a surcharge fee can be assessed. Since the option classes listed above have been certified by the Options Clearing Corporation to be listed on the Philadelphia Stock Exchange, Inc., and were subsequently listed for trading on August 31, 1999, the CBOE will assess these three surcharges beginning on that date. The Exchange interprets its rules to allow the Committee to vote on market-maker surcharges before the relevant option class has been listed for trading on another exchange. However, CBOE Rule 2.40 provides that the surcharge may not actually be assessed until the relevant class has been listed for trading on another exchange.

These fees will remain in effect until such time as the Committee or the Board determines to change these fees and file 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 CBOE 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.

⁴ The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate (per contract) from \$.20 to \$.00 in the relevant option classes. Any remaining funds generated by the surcharge will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

⁵ 15 U.S.C. 78f(b)(4).

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).

¹⁷ 15 U.S.C. 78s(b)(3)(C).

¹⁸ 17 CFR 200.30-3(a)(12).

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 action 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 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 also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-49 and should be submitted by October 12, 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. 34-41848; File No. SR-CBOE-99-53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Regarding the Extension of the Pilot Program Eliminating Position and Exercise Limits in FLEX Equity Options

September 9, 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 September 8, 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 DBOE. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of rule 19b-4 under the Act³ which renders the proposal effective upon receipt of this filing by the Commission.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to accelerate the operative date of the proposed rule change.

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

The CBOE proposes to extend the pilot period for the elimination of position and exercise limits on FLEX Equity options for three months, or until December 9, 1999.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ The Exchange has represented that the proposed rule change: (i) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Commission is waiving the minimum five business day notice requirement as permitted by rule 19b-4(f)(6) under the Act. *Id.* The Commission notes that the Exchange has requested that the Commission accelerate the operative date of the rule change to permit uninterrupted operation of the pilot program.

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 Exchange 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 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 purpose of the proposed rule change is to extend the pilot program allowing for the elimination of position and exercise limits in FLEX Equity options for another three months. On September 9, 1997, the Commission approved separate proposals by the CBOE, the American Stock Exchange, and the Pacific Exchange (the "Exchanges") to eliminate position and exercise limits for FLEX Equity options under a two-year pilot program.⁵

The Approval Order required the Exchanges to report to the Commission on the status of the program so that the Commission could use this information to evaluate the consequences of the program and to determine whether to approve the elimination of position and exercise limits for these products on a permanent basis. The CBOE submitted the required report to the Commission on June 2, 1999. It is our understanding, however, that the Commission staff is still evaluating the CBOE's report and those of the other Exchanges and thus, will not be prepared to approve the elimination of position and exercise limits for these products on a permanent basis by the end of the pilot program period on September 9, 1999.⁶ Consequently, the CBOE requests that the pilot program be extended for another three months, until December 9, 1999, so that the Commission staff may

⁵ Securities Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997) approving SR-CBOE-96-79, SR-Amex-96-19, and SR-PCX-97-09. ("Approval Order")

⁶ The Commission notes that the report required pursuant to the current pilot program was due in March 1999. The Commission did not receive the CBOE's report until June 1999. The Commission also notes that it did not receive a rule filing relating to this program until September 1999.

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).

⁹ 17 CFR 200.30-3(a)(12).