

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44489; File No. SR-CBOE-2001-31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Fees

June 28, 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 June 11, 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 establish a new fee on clearing firms for each contract the firm sends to the Exchange's Public Automated Routing ("PAR") system in a given month, if the total number of contracts cancelled by the firm on PAR that month exceeds 40% of the total number of contracts that the firm sent to PAR in that same month. The fee does not apply to any clearing firm that sends fewer than 4,000 contracts to PAR in a given month. 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 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

The Exchange is proposing to establish a fee to deal with various operational problems and costs resulting from the practice of immediately following orders routed through the Exchange's PAR system with a cancel request. Since these orders frequently come in large bunches, the PAR system can quickly become backlogged, which increases Exchange costs and adversely impacts public customers, their clearing firms, and Exchange DPMs by making the execution of customer orders less timely, and requiring the Exchange to spend increased amounts on systems and other hardware to process increased order traffic flow.

Under the proposed fee, a clearing firm would be charged 30 cents per contract for every option contract that it sends to the PAR system in any month where the total contracts canceled by the firm through PAR exceeded 40% of the total contracts that the firm sent to PAR in that same month. This fee will not apply to firms that send fewer than 4,000 contracts to PAR in a given month. Firms may avoid this fee, if they wish, by choosing not to route certain of their orders through PAR. In this way, the Exchange believes that the fee will help ease backlogs on PAR, and fairly allocate the related costs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act 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 Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder. 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.³

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 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 No. SR-CBOE-2001-31 and should be submitted by July 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,

Secretary.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(C).

⁴ 17 CFR 200.30-3(a)(12).