privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges in a manner consistent with other Participants will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares held in its General Account or otherwise attributed to it, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, BA Advisors will vote its shares of any Portfolio in the same proportion as all variable contract owners having voting rights with respect to that Portfolio; provided, however, that BA Advisors or any insurance company General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Portfolio, and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the trusts of the type described in the section 16(c) of the 1940 Act), as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that (a) shares of the Trust may be offered to Separate Accounts of both variable annuity and variable life insurance contracts and, if applicable, to Qualified Plans, (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Trust and the interests of Qualified Plans investing in the Trust, if applicable, may conflict, and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

12. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Qualified Plan executes an agreement with the Trust governing participation in such Portfolio that includes the conditions set forth herein to the extent applicable. A Qualified Plan or Qualified Plan participant will execute an application containing an acknowledgment of this condition at this time of its initial purchase of shares of any Portfolio.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44628; File No. SR–CBOE–2001–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Marketing and Administrative Fees

July 31, 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 18, 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 July 20, 2001. 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 deduct a one-time supplemental administrative charge from fiscal year 2000 interest payments to the marketing fee accounts of Designated Primary Market Makers (''DPMs'') to offset some of the administrative costs that the CBOE incurred in fiscal year 2000 in paying interest and issuing rebates on marketing fee account balances.

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

[2] 17 CFR 240.19b–4.

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, 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 DPM for marketing its services and attracting order flow to the CBOE.[3] 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 has implemented a one-time rebate of excess funds to the DPMs and market makers who contributed the funds. The CBOE intends periodically to refund account balances of $50 or more to those who contributed the fees.[4]

In collecting these fees over the course of the program, the CBOE 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 credited the accounts with interest earned retroactive to the start of the program, based on the average daily balance of each DPM account. According to the CBOE, the calculation and administration of interest payments and rebates requires it to make substantial expenditures on an ongoing basis. Therefore, effective July 1, 2001, the CBOE has imposed a prospective 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 intends to reduce the aggregate interest payments to members by each member's *pro rata* share of the $10,000 per month administrative fee. According to the CBOE, this procedure will ensure that the fee is assessed to the various DPM accounts fairly, based on the relative size of each DPM account.[5]

The CBOE states that it has already incurred costs in excess of $10,000 per month in fiscal year 2000 to establish the payment of interest and issuance of rebates under the marketing fee program. In order to offset some of these costs, the CBOE proposes in this rule change proposal to offset the interest to be credited to the DPM accounts for fiscal year 2000 account balances by deducting an additional one-time supplemental administrative charge of $120,000.[6] As with the prospective administrative fee, the charge will be divided among the accounts of the various DPM trading stations trading equity options (currently numbering approximately 68) on a pro-rata basis according to the size of the accounts.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act[7] and furthers the objectives of section 6(b)(4) of the Act[8] 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 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 comments with respect to the proposed rule change.

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

Within 35 days of the 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 the 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 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 SR–CBOE–2001–35 and should be submitted by August 22, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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

[4] *Id.*

[5] *Id.*

[6] The CBOE arrived at the $120,000 figure by taking the $10,000 per month prospective administrative fee that became effective upon the filing of SR–CBOE–2001–25 and multiplying it by the twelve months of fiscal year 2000. *See* letter from Christopher R. Hill, Attorney, CBOE, to Nancy Sanow, Assistant Director, Commission, dated July 19, 2001.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 17 CFR 200.30–3(a)(12).