

degree to which live ammo orders accumulate on the live ammo screens during the pilot period.

The Commission finds good cause for approving Amendment No. 6 to the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. In Amendment No. 6, CBOE requests that the proposal be approved on a pilot basis for a nine-month period. Amendment No. 6 also would remove the requirement that the live ammo to RAES feature may only be used in unusual market conditions or when there is a large influx of orders to the Book. As amended, the proposal would permit the OBO (or DPM) to employ the live ammo to RAES feature at any time when the OBO (or DPM) determines that there are more orders on the live ammo screen than can be expeditiously handled in open outcry.<sup>26</sup> The Commission finds good cause for accelerating approval of Amendment No. 6 to allow the Exchange to address immediately the order processing problems caused by the live ammo system while developing the needed systems enhancements to eliminate these problems in the future.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 6, including whether Amendment No. 6 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 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-98-27 and should be submitted by March 2, 2000.

## VI. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change, as amended, (SR-CBOE-98-27) is approved on a pilot basis until October 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3033 Filed 2-9-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42382; File No. SR-CBOE-99-52]

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

February 3, 2000.

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 September 2, 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 Exchange filed Amendment No. 1<sup>3</sup> to the

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Letter from Stephanie C. Mullins, Attorney, CBOE, to Sonia Patton, Attorney, Division of Market Regulation ("Division"), Commission, dated January 21, 2000 ("Amendment No. 1"). Amendment No. 1 states that all option classes on Friebe Goldman International (FGI), Northwest Airlines Corporation (NAQ), Open Market, Inc. (OQM), Orbital Science Corp. (ORB), Onsale, Inc. (QOL), Prime Medical Services, Inc. (QSI), Synovus Financial Corp. (SNV), Wackenhut Corrections Corp. (WHC), and Zebra Technologies Corp. (ZBQ) were designated to Designated Primary Market-Makers ("DPMs") on September 7, 1999 and all option classes on The Boeing Company (BA) were designated to DPMs on September 13, 1999. Amendment No. 1 also states that no market-maker

proposed rule change on January 23, 2000. 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,<sup>4</sup> entitled "Market-Maker Surcharge for Brokerage."

### 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

##### 1. Purpose

Pursuant to CBOE Rule 2.40, on September 1, 1999, the Exchange's Equity Floor Procedure Committee ("EFPC") approved the following fees for the following option classes:

surcharges were assessed on these options after their designation to DPMs.

<sup>4</sup> See Securities Exchange Act Release No. 41121 (Feb. 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40). The Exchange imposes a market-maker surcharge to allow the Exchange and its member firms to better compete with other exchanges in floor brokerage and order book rates. The surcharge is used to (i) reimburse the Exchange to the extent that the order book official ("OBO") brokerage rate is reduced if the reduction is based upon a recommendation of resident market-makers, and (ii) pay stationary floor brokers ("SFBs") to induce them to reduce the brokerage rates they charge their customers. A resident market-maker is defined under CBOE Rule 2.40(a)(ii) as a market-maker who transacted at least 80% of his market-maker contracts in option classes traded in the trading crowd where the particular option class is traded in the prior calendar month. An SFB is defined under CBOE Rule 2.40(a)(i) as a floor broker who (i) has established a business in the trading crowd for an option class of accepting and executing orders for members or registered broker-dealers and (ii) transacted at least 80% of his orders for the previous month in the trading crowd at which a particular option class is traded.

<sup>26</sup> In Amendment No. 6, the Exchange committed to distribute a Regulatory Circular to announce the changes to its members. The Regulatory Circular will also remind members of the priority principles under CBOE Rule 6.45(a) and (b).

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract) <sup>5</sup>
The Boeing Company (BA) .....	0.14	\$0.00
Friede Goldman International (FGI) .....	0.02	0.00
Northwest Airlines Corporation (NAQ) .....	0.02	0.00
Open Market, Inc. (OQM) .....	0.02	0.00
Orbital Science Corp. (ORB) .....	0.02	0.00
Onsale, Inc. (QOL) .....	0.02	0.00
Prime Medical Services, Inc. (QSI) .....	0.02	0.00
Synovus Financial Corp. (SNV) .....	0.02	0.00
Wackenhut Corrections Corp. (WHC) .....	0.02	0.00
Zebra Technologies Corp. (ZBQ) .....	0.02	0.02

<sup>5</sup> The market-maker surcharge will be used to reimburse the Exchange for the reduction in the OBO brokerage rate from \$0.20 in the relevant option classes. Any remaining funds will be paid to SFBs as provided in Exchange Rule 2.40.

These fees went into effect on Thursday, September 2, 1999. All of the option classes above are currently multiple listed on at least one other exchange. The most recent certification for multiple listing relates to options on The Boeing Company (BA) ("Boeing"), which were listed on the Pacific Exchange ("PCX") beginning on September 2, 1999. All of the market-maker surcharge fees, except those applicable to Boeing, reflect reductions in former market-maker surcharge fees imposed pursuant to Exchange Rule 2.40.

With respect to options on Boeing, CBOE Rule 2.40(e) requires that an option be listed for trading on another exchange before a market-maker surcharge fee can be assessed. Boeing has been certified by the Options Clearing Corporation to be listed on the PCX. Therefore, the CBOE began assessing the market-maker surcharge on September 2, 1999, when Boeing was first listed on the PCX.<sup>6</sup>

The CBOE represents that the market-maker surcharge fees were effective from September 2, 1999 until the options at issue were designated to DPMs—September 7, 1999 for FGI, NAQ, OQM, QOL, QSI, SNV, WHC, and ZBQ, and September 13, 1999 for BA. The fees were eliminated when the options were designated to DPMs.<sup>7</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of

Section 6(b)(4),<sup>9</sup> in particular, in that 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 not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange did not solicit or receive written comments on 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)(ii) of the Act,<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> 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.<sup>12</sup>

## 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 the File No. SR-CBOE-99-52 and should be submitted by March 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42385; File No. SR-MSRB-00-01]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Supervision of Correspondence With the Public

February 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>6</sup> The Exchange interprets Rule 2.40 to allow the EFPC to vote on market-maker surcharge before a class has been listed for trading on another exchange. Rule 2.40, however, provides that the market-maker surcharge may not actually be assessed until the class has been listed for trading on another exchange.

<sup>7</sup> Telephone conversation between Stephanie C. Mullins, Attorney, CBOE, and Gordon Fuller, Special Counsel, Division, Commission (December 10, 1999).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 15 CFR 240.19b-4(f)(2).

<sup>12</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).