

Rule 19b-4(f)(1) thereunder.<sup>8</sup> At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate the 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.

#### IV. Solicitation of Comments

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing. 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-00-32 and should be submitted by August 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43112; File No. SR-CBOE-00-28]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to the Adoption of a New Marketing Fee

August 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 July 10,

2000, the Chicago Board Options Exchange, Inc. ("CBOE" or the "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 adopt a new marketing fee to be imposed on transactions of market makers (including Designated Primary Market Makers, or "DPMs"), other than market-maker-to-market-maker transactions. The fee will be effective as of July 1, 2000, and will be imposed at the rate of \$.40 per contract on all classes of equity options.

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

The purpose of the proposed new marketing fee is to provide a source of revenue to the Exchange to be used for marketing purposes in light of changing competitive circumstances that have arisen, and may continue to arise, in particular classes of multiply traded equity options. These circumstances include the growing practice by some specialists on options exchanges of paying brokers for orders in multiply traded classes directed to these specialists. In light of this development and in order to be competitive in multiply traded options, the CBOE has determined to impose a new marketing fee on market makers' transactions (other than transactions between market makers) in designated classes of equity options.

All of the funds generated by the new fee will be segregated according to the station where the classes of options subject to the fee are traded, and will be made available to the DPM at the station where the funds were collected. These funds in turn will be used by the DPM to attract orders in the classes of options traded at that station. This use of funds could include payments made by the DPMs to broker-dealers for the orders they direct to the Exchange. The specific terms governing the orders that qualify for payment and the amount of any payment to be made will be determined by the DPMs in whatever manner they believe is most likely to be effective in attracting order flow to the Exchange in options traded at the DPMs' assigned stations.

The DPMs will be obligated to account to the Exchange for the use they make of funds made available to them by the Exchange for this purpose, but all determinations concerning the amount the DPMs may pay for orders and the types and sizes of orders that qualify for payment will be made exclusively by the DPMs, and not by the Exchange. The Exchange may provide administrative support to the DPMs in such matters as keeping track of the number of qualified orders each firm directs the Exchange, and making the necessary debits and credits to the accounts of the DPMs and the firms to reflect the payments that are to be made.

The new marketing fee will apply to all transactions of market makers (including DPMs), except for transactions solely between market makers. According to the CBOE, market-maker-to-market-maker trades will not be part of the program so as to avoid imposing added costs on what, for the most part, are hedging or rebalancing transactions of market makers entered into in support of their affirmative market maker obligations. Moreover, market-maker-to-market-maker transactions are not the kind of transaction that the marketing program is designed to attract in the first place. As an administrative matter, the marketing fee initially will be collected on all transactions of market makers, and will then be refunded to the extent it was collected on market-maker-to-market-maker trades. The CBOE represents that any changes to the classes of options to which the marketing fee applies, to the rate or rates which the fee is assessed, or to the disposition by the Exchange of funds generated by the fee will be the subject of separate filings with the Commission

<sup>8</sup> 17 CFR 240.19b-4(f)(1).

<sup>9</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.

made pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>3</sup>

As described above, the proposed marketing fee will be imposed on all of the market makers (including the DPM) in the classes of options that are subject to the fee. The Exchange believes that, because these same persons will be able to participate in the order flow derived from the program, there will be a fair correlation between those members who pay the costs of the marketing program funded by the new fee and those who receive the benefits of the program.

In connection with any program involving payment for order flow that may be funded by the Exchange's proposed marketing fee, the Exchange will issue appropriate regulatory or educational circulars to its members that emphasize the disclosure and best execution obligations of members who may accept such payment.

The Exchange believes that the new marketing fee and the marketing programs it may fund, including any payment for order flow program, will serve to enhance the competitiveness of the Exchange and its members. Accordingly, the Exchange believes that the proposed rate change is consistent with and furthers the objectives of the Act, including specifically Section 6(b)(5)<sup>4</sup> thereof, which requires the rules of exchanges to be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and Section 11A(a)(1)(C)<sup>5</sup> thereof, which reflects the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers and among exchange markets.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE 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*

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

### **III. Date of Effectiveness of the Proposed Rule Change and Timing of 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>6</sup> and subparagraph (f)(2) of Rule 19b-1 thereunder.<sup>7</sup> 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.

### **IV. Solicitation of Comments**

The Commission, in the past, has raised serious concerns about payment for order flow and internalization.<sup>8</sup> Payment for order flow is of concern because brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe their customers to find the best execution available.<sup>9</sup> While payment for order flow has been a common practice in the equities markets for some time, only recently has payment for order flow developed in the options markets. Despite these concerns, however, the CBOE's proposal involves the imposition of a fee and the Act gives exchanges wide latitude to establish, revise, and collect fees and other charges without prior Commission approval. The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. In particular, the Commission asks persons who submit comments whether the payment for order flow facilitated by the CBOE's proposal raises greater or different concerns than payment for order flow by specialists on other options exchanges. After receiving comments, and at any time within 60 days from the date the CBOE filed its proposal, the Commission can decide to require the CBOE to stop collecting the fee, refile the proposal, and await

Commission approval before reinstituting the fee.

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-00-28 and should be submitted August 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43114; File No. SR-CBOE-00-31]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., to Amend its Rules to Allow for the Trading of Options on Securities that Represent Interests in Registered Investment Companies Based on Narrow-Based Indices or Portfolios of Securities**

August 3, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 24, 2000, the Chicago Board Options Exchange Inc. ("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 Exchange. The proposed rule change has been filed by the CBOE as a "non-controversial" rule

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> See Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (Feb. 28, 2000); Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006 (Nov. 2, 1994). See also Securities Exchange Act Release No. 43084 (July 28, 2000).

<sup>9</sup> The CBOE has filed with the Commission a proposal to implement the "CBOE Best Execution Assurance Program." See Securities Exchange Act Release No. 43113 (August 3, 2000), File No. SR-CBOE-00-32.

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

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78k(a)(1)(C).