

Dated: June 13, 2001.

Steven W. Williams,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44410; File No. SR-Amex-2001-26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating To an Increase in the Exchange Regulatory Fee

June 12, 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 May 7, 2001, the American Stock Exchange LLC ("Amex" 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 Exchange. 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 Amex proposes to amend the Amex Equity Fee Schedule to increase the Regulatory Fee from $.0005 \times \text{Total Value}$ to $.00075 \times \text{Total Value}$ for orders entered electronically into the Amex Order File from off the Floor ("System Orders") by a member or member organization trading as an agent for the account of a non-member competing market maker. Below is the text of the proposed rule change. Text in italics indicates material to be added.

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Amex Equity Fee Schedule

I. Transaction Charges

No change

II. Regulatory Fee

$.00005 \times \text{Total Value}$ (for all equity securities except Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts).

$.00075 \times \text{Total Value}$ (for System Orders in Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts entered by a member or member organization trading as agent for the account of a non-member competing market maker).

Notes:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

1. All trades executed on the Exchange in Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts will be exempt from the regulatory fee. This provision does not apply to System Orders of a member or member organization trading as agent for the account of a non-member competing market maker.

2. System Orders for up to 2,099 shares will not be assessed a regulatory fee. This provision does not apply to System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker. (Orders in Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts are covered under Note 1 above.)

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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 Amex included statements concerning the purpose of an 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 Amex 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 Amex proposes to amend the Exchange Equity Fee Schedule to increase the Regulatory Fee for certain orders in Portfolio Depositary Receipts³ (e.g. SPDRs® Nasdaq 100 Index Tracking Stock (sm)), Index Fund Shares⁴ (e.g., iShares(sm) Select Sector SPDRs®), and Trust Issued Receipts⁵ (e.g., HOLDRs) (referred to collectively herein as the "Products"). The Exchange does not assess a transaction charge for orders in the Products entered electronically into the Amex Order File from off the Exchange Floor ("System Orders") up to 5,099 shares.⁶ This provision, however, does not apply to System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker.⁷ The

³ See Amex Rule 1000(b) for the definition of Portfolio Depositary Receipts.

⁴ See Amex Rule 1000A(b) for the definition of Index Fund Shares.

⁵ See Amex Rule 1200(b) for the definition of Trust Issued Receipts.

⁶ See Amex Equity Fee Schedule.

⁷ A "competing market maker" is defined in the Exchange Equity Fee Schedule as a specialist or market maker registered as such as on a registered stock exchange (other than the Amex) or a market

Exchange also imposes a Regulatory Fee for equities transactions of $.00005 \times \text{Total Value}$. Transactions executed on the Amex in the Products are exempt from the Regulatory Fee, except for System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker, which continue to be subject to the Regulatory Fee.

The Exchange proposes to increase the Regulatory Fee from $.00005 \times \text{Total Value}$ to $.000075 \times \text{Total Value}$ for System Orders in the Products entered by members acting as an agent for non-member competing market makers. The Exchange is undertaking the proposed revision in fees to offset increased Exchange expenses and costs associated with the continued development, listing and trading of additional Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts. Because the proposed revision in fees will better enable the Exchange to further develop, list, and trade new Products, the Exchange believes it is appropriate and necessary to implement a revised Regulatory Fee for the Products.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act⁸ in general, and furthers the objectives of section 6(b)(4) of the Act⁹ in particular, in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using the Exchange facilities.

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.

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 for Commission Action

Within 35 days of the date of 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

maker bidding and offering over-the-counter in an Amex-traded security.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

(ii) as to which the Exchange consents, the Commission will:

(A) by order approve such 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 Amex. All submissions should refer to File SR-Amex-2001-26 and should be submitted by July 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44408; File No. SR-CBOE-2001-14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend Its Rules Regarding Jurisdiction Over Former Members and Associated Persons for Failure To Honor an Exchange Arbitration Award

June 11, 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 March 27,

2001, 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 proposes to amend its rules regarding jurisdiction over former members and associated persons for failure to honor an Exchange arbitration award.

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 proposed to amend its rules to provide that the failure to honor a CBOE arbitration award by a former Exchange member or associated person would subject such former member or associated person to the disciplinary jurisdiction of the Exchange regardless of the date of termination of membership.

Chapter 18 of the Exchange's rules governs the CBOE's arbitration process. CBOE Rule 18.37 provides that any member or person associated with a member who fails to honor an Exchange arbitration award shall be subject to CBOE disciplinary proceedings. Furthermore, CBOE Rule 18.1, Interpretation and Policy .02 states that it may be deemed conduct inconsistent with just and equitable principles of trade to fail to honor a CBOE arbitration award. Conduct inconsistent with just and equitable principles of trade is a violation of Exchange Rule 4.1, and is

thus subject to CBOE disciplinary proceedings.

Chapter 17 of the Exchange's rules governs the CBOE disciplinary process. Generally, the Exchange maintains disciplinary jurisdiction over its members, and persons associated with its members, with respect to instances where members or associated persons are alleged to have violated or aided and abetted a violation of any provision of the Act, the rules and regulations promulgated thereunder, or any constitutional provisions, by-laws or rules of the Exchange or any interpretation thereof or resolution of the Board of the Exchange regulating the conduct of business on the Exchange.

Thus, a member or person associated with a member who fails to honor an Exchange arbitration award has violated CBOE Rule 18.37 and CBOE Rule 4.1 and is subject to disciplinary proceedings under Chapter 17. Currently, however, such failure to honor a CBOE arbitration award by a former member, or former person associated with a member, may not always be subject to the Exchange's disciplinary jurisdiction.

CBOE Rule 17.1(b) provides that members (or associated persons) shall continue to be subject to the disciplinary jurisdiction of the Exchange following such member's (associated person's) termination of membership (association with a member) with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former member (person) within one year of the Exchange's receipt of notice of such termination. This provision allows for certain anomalies in the context of failure to pay arbitration awards. For example, the following scenario is possible: A customer is involved in a trading dispute with a CBOE member. Months later, the CBOE member terminates its membership on the Exchange. Weeks after the membership termination, the customer files an arbitration claim with the CBOE Arbitration Department against the former member.³ One and one-half years after the membership termination, the customer prevails in the arbitration proceeding, and a monetary award is

³ CBOE Rule 18.1, Interpretation and Policy .01 provides, among other things, that former members and associated persons are subject to Exchange arbitration proceedings with respect to any dispute claim or controversy arising out of the Exchange business of such former member or associated person that took place while such member or associated person was still a member or associated person.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.