

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50903; File No. SR-CBOE-2004-84)

December 21, 2004

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

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 December 13, 2004, the Chicago Board Options Exchange, Incorporated (“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 CBOE. The proposed rule change has been filed by CBOE as establishing or changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing. 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 Exchange proposes to amend its Fee Schedule to (i) make certain fee changes, and (ii) adopt a communication review fee. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. 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

CBOE proposes to: (i) amend its Annual FOCUS Report Filing Fee, Firm FOCUS Minimum Monthly Fee, Order Routing System (“ORS”) Order Cancellation Fee and Floor Broker Workstation (“FBW”) Fees; and (ii) adopt a Communication Review Fee. The Exchange also proposes to delete from its Fee Schedule certain fees that it represents are now outdated. The Exchange proposes to amend the following fees:

(i) Annual FOCUS Report Filing Fee. CBOE market-makers are required to file annual financial statements with the Exchange pursuant to Rule 17a-5(d) under the Act and CBOE Rule 15.5. Currently, the Exchange charges an annual filing fee of \$100 to CBOE market-makers who make their annual filing by paper copy and \$25 to CBOE market-makers who submit their annual filing electronically.⁵ The Exchange proposes to increase the fee for a paper filing to \$150 and increase the fee for an electronic filing to \$50. The Exchange represents that these increased fees will assist it in offsetting increased costs of staff review of these filings.

⁵ See Securities Exchange Act Release No. 40566 (October 19, 1998), 63 FR 57339 (October 27, 1998).

(ii) Firm FOCUS Minimum Monthly Fee. CBOE charges member organizations and Designated Primary Market-Makers (“DPMs”) that are subject to Rule 15c3-1 under the Act, and for which the Exchange is the Designated Examining Authority (“DEA”), an annual fee of \$.40 per \$1,000 of gross revenue as reported on the member organization's FOCUS report (excluding commodity commission revenue) (“DPM & Firm DEA Fee”). The DPM & Firm DEA Fee is currently subject to a monthly minimum fee of \$1,000 for clearing firms and \$250 for non-clearing member firms (“Firm FOCUS Minimum Monthly Fee”).⁶ The Exchange proposes to increase the Firm FOCUS Minimum Monthly Fee assessed to non-clearing member firms to \$275 to help the Exchange more closely cover the costs of regulating these member firms.

(iii) ORS Order Cancellation Fee. CBOE currently assesses an executing clearing firm \$1 per cancelled ORS order if the number of cancelled ORS orders exceeds the number of executed ORS orders in the same month (“ORS Order Cancellation Fee”).⁷ The ORS Order Cancellation Fee is not charged if fewer than 500 ORS orders are cancelled in the month. The Exchange proposes to revise the methodology used to assess the ORS Order Cancellation Fee. Specifically, the Exchange proposes to assess \$1 for each cancelled ORS order in excess of the number of orders that the executing clearing member executes in a month. As is presently the case, the ORS Order Cancellation Fee will not be assessed if fewer than 500 orders are cancelled in a month.

⁶ See Securities Exchange Act Release No. 43144 (August 10, 2000), 65 FR 50258 (August 17, 2000). The Firm FOCUS Minimum Monthly Fee applies to those clearing member firms and non-clearing member firms whose DPM & Firm DEA Fee would not otherwise exceed the thresholds of \$1,000 and \$250.

⁷ See Securities Exchange Act Release No. 44607 (July 27, 2001), 66 FR 40757 (August 3, 2001).

The proposed ORS Order Cancellation Fee is similar to cancellation fees adopted by other exchanges.⁸ The Exchange believes that this revised fee will result in increased order flow to CBOE.

(iv) FBW Fee. FBW terminals were initially rolled out to equity option trading crowds. CBOE currently assesses a fee of \$425 per month for FBW functionality that is placed on a desktop terminal. CBOE assesses an additional \$100 per month if the FBW application resides on a workstation that includes ILX and TNT functionalities. No fee is assessed for use of a mobile FBW.⁹

The Exchange represents that it plans to roll out FBW terminals to index options trading crowds. Only mobile FBWs will be used in index option trading crowds due to lack of space for desktop FBW applications. The Exchange proposes to assess a fee of \$100 per month per login ID for mobile FBWs used in index option trading crowds. Additionally, the Exchange proposes to assess DPMs \$100 per month per login ID for use of an FBW, whether it is the desktop application or mobile. The Exchange represents that these FBW fees will assist the Exchange in offsetting the cost of rolling out FBWs to its index options trading crowds.

(v) Communication Review Fee. CBOE represents that its Department of Financial and Sales Practice Compliance reviews a member firm's options-related advertisements, educational material and sales literature for compliance with applicable rules of the CBOE, Commission, and the Securities Investor Protection Corporation.¹⁰ These public

⁸ See Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 47587 (July 19, 2002).

⁹ See Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003).

¹⁰ Under CBOE Rule 9.21(c), CBOE members and member organizations are required to submit to the Exchange's Department of Financial and Sales Practice Compliance for approval every advertisement and all educational materials pertaining to options at least

communications include, for example, print, television and radio advertisements, or electronic communications, such as Web sites.

CBOE proposes to implement a fee for this service ("Communication Review Fee") as follows: Regular review – 1) for printed material reviewed, \$75 per submission, plus \$10 for each page reviewed in excess of 10 pages; and 2) for video and audio media reviewed, \$75 per submission, plus \$10 per minute for each minute of tape reviewed in excess of 10 minutes; Expedited review – 1) for printed material reviewed, \$500 per submission, plus \$25 for each page reviewed in excess of 10 pages; and 2) for video and audio media reviewed, \$500 per submission, plus \$25 per minute for each minute of tape reviewed in excess of 10 minutes.

CBOE represents that expedited review will be completed within three business days, not including the date the item is received by the Department of Financial and Sales Practice Compliance, unless a shorter or longer period is agreed to by the Department of Financial and Sales Practice Compliance. The Department of Financial and Sales Practice Compliance may, in its sole discretion, refuse requests for expedited review. The proposed Communication Review Fee is similar to the communication review charge of the National Association of Securities Dealers, Inc. ("NASD").¹¹

The Exchange intends to implement the fee changes discussed above and the new Communication Review Fee on January 1, 2005.

(vi) Expired Fees. The Exchange proposes to delete the paragraph relating to the Booth Rental Incentive Program from its Fee Schedule. The Program is due to expire on December 31, 2004, and the Exchange has determined not to extend the Program. Also, the

ten days prior to use. Telephone conversation between Jaime Galvan, Senior Attorney, CBOE, and Natasha Cowen, Attorney, Division of Market Regulation ("Division"), Commission, on December 15, 2004.

¹¹ See NASD By-Laws, Schedule A, Section 13.

Exchange proposes to delete the Option Trading Permit Lease Pool Bid Fee as these permits expired.¹²

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁴ 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

CBOE does not believe that the proposed rule change will impose any burden on competition that is 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

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

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 Act¹⁵ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁶ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if

¹² See Securities Exchange Act Release No. 49723 (May 18, 2004), 69 FR 29591 (May 24, 2004).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

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.¹⁷

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2004-84 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

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

¹⁷ 15 U.S.C. 78s(b)(3)(C).

available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2004-84 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).