

references to the equivalent New York record date.

Amex has participated in meetings sponsored by the Commission among self regulated organizations, clearing corporations, and other industry participants and has kept its members informed of the forthcoming transition to T+3. As the effective date for implementation draws near, Amex will continue to educate its membership and to ascertain that they are informed and understand specific timing and cutover issues. The Amex's implementation of these rule changes will be consistent with the June 1995 conversion schedule which Amex and the National Securities Clearing Corporation ("NSCC") have developed for industry use.<sup>4</sup> The schedule is as follows.

Trade date	Settlement cycle	Settlement date
June 2 Friday	5 day .....	June 9 Friday.
June 5 Monday.	4 day .....	June 9 Friday.
June 6 Tuesday.	4 day .....	June 12 Monday.
June 7 Wednesday.	3 day .....	June 12 Monday.

If the Commission determines to alter the exemptions currently provided in Rule 15c6-1, the Amex may be required to file additional rule amendments.

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it protects investors and the public interest by reducing the risk to clearing corporations, their members and public investors which is inherent in settling securities transactions. This is accomplished by reducing the time period for settlement of most securities transactions which will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time.

The proposed change is also consistent with Commission Rule 15c6-1 which requires brokers or dealers to settle most securities transactions no later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

<sup>4</sup> NSCC will use two double-settlement days for the conversion. The first double-day settlement, scheduled for Friday, June 9, will incorporate trades from Friday, June 2 (the last T+5 settlement day) and from Monday, June 5 (a T+4 settlement day). The second double-day settlement, scheduled for Monday, June 12, will include trades from Tuesday, June 6 (T+4 settlement day) and Wednesday, June 7 (the first T+3 settlement day). With respect to the two trade days on which "regular way" trades will settle on T+4, Amex rules will be temporarily deemed to be amended accordingly.

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

Amex does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

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

Within thirty-five 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 ninety 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 Amex 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. 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 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 Amex.

All submissions should refer to File No. SR-Amex-94-57 and should be submitted by February 2, 1995.

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

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

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[Release No. 34-35190; File No. SR-CBOE-94-50]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to As-Of-Add Submissions**

January 3, 1995.

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 December 1, 1994, 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 and II below, which Items have been prepared by the Exchange. The Exchange subsequently filed Amendment No. 1 to the proposed rule change on December 23, 1994.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. As discussed below, the Commission has also granted accelerated approval to a portion of the proposal.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to: (1) Amend CBOE Rule 2.26 so as to place a ceiling on the monthly fees members pay for submitting trade information under Exchange Rule 6.51<sup>4</sup> after the trade date (each an "as-of-add") on more than a stated maximum percentage of their monthly trades and to enable the Exchange to suspend the rule in exigent circumstances; and (2) amend CBOE Rule 17.50(g) to include a fine schedule

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1991).

<sup>3</sup> In Amendment No. 1 to the proposal, the Exchange proposes to change the fine schedule as proposed under CBOE Rule 17.50(g) in two ways. First, as amended, a fine will be assessed whenever the as-of-add (as defined herein) submissions of an individual member or a clearing member equals or exceeds 300% of that member's maximum nominal as-of-add rate for two, rather than three, consecutive months. Second, fines will be imposed with reference to a rolling 12-month period, rather than within a calendar year. In Amendment No. 1, the Exchange also requests accelerated approval of the proposed rule change. See Letter from Dan Schneider, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated December 21, 1994 ("Amendment No. 1").

<sup>4</sup> Among other things, Rule 6.51 requires that each transaction be immediately reported to the Exchange in a form and manner prescribed by the Exchange. See Rule 6.51(a).

for substantial and repeated failures to submit trade data on the trade date. The Exchange also proposes that the as-of-add fee pilot program ("Pilot Program"), as proposed to be amended herein, be made permanent. 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 Exchange 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 rule change is to amend the as-of-add fee Pilot Program in three ways and to have the Pilot Program, as amended, made permanent. The proposed changes would: (1) Place a ceiling on the monthly as-of-add fee to be paid under Rule 2.26; (2) establish a fine schedule under Rule 17.50(g) for substantial and repeated failures to submit trade data on the trade date; and (3) incorporate into Rule 2.26 provisions like those currently included in Rule 2.30(g) ("Fee for Delayed Submission of Trade Information") that would authorize the Exchange to suspend Rule 2.26 (and thereby waive the fees that would otherwise be due) in exigent circumstances. The Exchange believes these amendments to the Pilot Program are fully responsive to the concerns the Commission has previously identified with respect to the Pilot Program.<sup>5</sup>

Under the Pilot Program in its present form, the fee, if any, to an individual member is \$10.00 for each as-of-add submitted during a given month in excess of the percentage of such submissions considered "nominal"

<sup>5</sup> See Securities Exchange Act Release Nos. 32999 (October 1, 1993), 58 FR 53003 (October 13, 1993) (Order approving the as-of-add fee Pilot Program on a six-month pilot basis), 33855 (April 4, 1994), 59 FR 17128 (April 11, 1994) (order extending the Pilot Program until September 30, 1994), and 34783 (October 3, 1994), 59 FR 51459 (October 11, 1994) (order extending the Pilot Program until December 31, 1994) ("Pilot Extension Approval Order").

under paragraph (a) of Rule 2.26.<sup>6</sup> The fee to any clearing firm under paragraph (b) of that rule is \$3.00 for each as-of-add submitted in excess of the "nominal" percentage.<sup>7</sup> In addition, any member assessed an as-of-add fee may request verification from the Exchange pursuant to Part B of Chapter XIX of CBOE's Rules and may appeal the fee assessment pursuant to Part A thereof.

The CBOE believes that the as-of-add fees assessed pursuant to the Pilot Program recognize that late trade submissions impose special processing costs on the Exchange and require significant effort by clearing firms and executing brokers to check and resolve late trade reports. The Exchange represents that late trade submissions are especially likely to burden the Exchange's operations during periods of high volume and heightened volatility, when added stress is least tolerable, thereby adding financial risk to members during these already difficult periods.

The as-of-add fees, according to the Exchange, respond to these problems in two ways. First, the as-of-add fees help to reimburse the Exchange for the administrative burdens and costs of processing post-trade date submissions, and impose the obligation to make such reimbursement on those members who account for an inordinate number of as-of-add submissions and who are thus most responsible for these added costs in the first place (*i.e.*, individual members).

Second, the Pilot Program creates what the Exchange believes to be reasonable economic incentives for members to submit trade data on the trade date, thereby relieving the Exchange and Exchange members of high levels of special handling associated with processing as-of-adds. The Exchange continues to believe, for the reasons set forth in previous filings and supplemental correspondence,<sup>8</sup> that the particular fees included in the Pilot Program are equitably allocated among individual members and clearing member organizations.

In the last extension of the Pilot Program, the Commission approved the proposed rule change as a fair and equitable allocation of reasonable fees, but asked the Exchange, in connection with any request to make the Pilot Program permanent, to consider ways to

<sup>6</sup> The current "nominal" maximum allowable monthly number of as of adds for individual members is 2.4% of an individual member's monthly trades.

<sup>7</sup> The current "nominal" maximum allowable monthly number of as of adds for clearing members is 1.2% of clearing members' monthly trades.

<sup>8</sup> See *supra* note 5 and *infra* note 10.

incorporate the Pilot Program into Exchange Rule 17.50(g), under which the Exchange imposes fines for minor rule violations ("Minor Rule Plan").<sup>9</sup> The Commission also required the CBOE to submit a report setting forth particular statistics about the Pilot Program.<sup>10</sup>

The first proposed amendment to Rule 2.26 would place a cap on the monthly fee that any individual member or clearing firm would pay under that rule. The monthly fee to individual members under Rule 2.26(a) would be capped at \$500.00, and the monthly fee to clearing firms under Rule 2.26(b) would be capped at \$1,000.00. The Exchange believes that the caps, when set at the levels proposed, will enable the Exchange to recover its costs for as-of-add processing while ensuring that no individual member or clearing member organization pays an inappropriately high, or punitive, fee.<sup>11</sup> In addition, although the proposed cap levels are different for individual members as compared to clearing firms, the Exchange believes that the structure and size of the fee caps are equitable and appropriate. Clearing firms pay, on average, substantially higher aggregate as-of-add fees than do individual members, and the fee cap to clearing firms accordingly, in the Exchange's opinion, should be set at a higher level.

The second proposed amendment to Rule 2.26 would incorporate in a new paragraph (d), provisions authorizing the Clearing Procedures Committee, with the approval of the President of the Exchange, or his designee, to suspend application of the rule, and thereby waive the assessment of as-of-add fees, for periods no greater than seven calendar days, plus extensions, whenever unusual circumstances so dictate. This new paragraph corresponds to the similar suspension provisions contained in Rule 2.30(g).<sup>12</sup> In the proposal, as in Rule 2.30(g), the term "unusual circumstances" refers to

<sup>9</sup> See Pilot Extension Approval Order, *supra* note 5. In the Pilot Extension Approval Order the Commission stated that it would not be inclined to grant a further extension of the as-of-add fee Pilot Program until the concerns of the Commission expressed therein had been addressed by the CBOE. *Id.*

<sup>10</sup> See Letter from Joanne Moffic-Silver, Associate General Counsel, CBOE, to Sharon Lawson, Assistant Director, OMS, Division, Commission, dated November 29, 1994 ("Pilot Report").

<sup>11</sup> The CBOE notes that the use of fee caps will limit the incentive effect of the Pilot Program, but that result will, in its opinion, be offset in part by the introduction of the proposed fine schedule under Rule 17.50(g).

<sup>12</sup> Rule 2.30 provides for fees to be assessed against market makers and clearing members for failing to submit trade information required by Rule 6.51 within two hours after execution of a trade.

circumstances that affect the ability of a significant number of members to submit trade information on time. Any such suspension of the rule must be in writing and must be published by the Exchange for distribution to the membership.

The Exchange anticipates that this authority would be used very infrequently. The Exchange represents that it has invoked Rule 2.30 suspensions only once a year, on average, since the rule was adopted in 1991. In every case, the CBOE represents that the suspensions have occurred on a day when there was both extraordinary volume and a trading surge at the end of the day. Therefore, according to the Exchange, it is likely that any suspension under proposed Rule 2.26 would ordinarily be matched with a suspension under Rule 2.30.

The third proposed change to the Pilot Program would add a fine schedule to CBOE Rule 17.50(g) for substantial and repeated failures to file trade data on the trade date, in contravention of Rule 6.51. As proposed, any member who exceeds the as-of-add rate considered nominal under Rule 2.26<sup>13</sup> by three times or more for two consecutive months would be subject to a fine of \$250 for the first offense, \$500 for the second offense, and \$1,000 for each offense thereafter occurring during any 12-month period.<sup>14</sup> Fines under this proposal would therefore currently be triggered for an individual member whenever that member's as-of-add submissions equal or exceed 7.2% of total trade submissions in each of two consecutive months, while fines to clearing firms would be triggered whenever a clearing member's as-of-add submissions equal or exceed 3.6% of total trade submissions for each of two consecutive months.<sup>15</sup> The fines imposed pursuant to Rule 17.50(g) would be in addition to any fees due under Rule 2.26 and would serve to penalize those members who submit the greatest number of excessive as-of-add trades.

The Exchange believes that the proposed fines would fairly and

effectively supplement the fees assessed under Rule 2.26, by providing a clear sanction in those circumstances in which discipline is clearly appropriate. As structured, fines would be imposed when late submissions by a particular member or members reflect a pronounced pattern of persistent and excessive use of as-of-adds. Absent such a pattern, the Exchange believes, that the assessment of fees is sufficient and that fines should ordinarily not be imposed. Of course, in any circumstance in which a member's use of as-of-adds suggests that it may be appropriate to impose more severe disciplinary sanctions than would be provided for under Rule 17.50(g), the member would be subject to investigation and discipline in accordance with Chapter XVII.<sup>16</sup>

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Written comments on the proposed rule change were neither solicited nor received.

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

The Exchange has requested that the proposed rule change be given

accelerated effectiveness pursuant to Section 19(b)(2)<sup>18</sup> of the Act.<sup>19</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).<sup>20</sup> Specifically, the Commission finds, as it did in originally approving the Pilot Program and the subsequent extensions,<sup>21</sup> that imposing fees on members who submit as-of-adds for more than a prescribed percentage of transactions in any month is likely to: (1) Offset the carrying costs incurred by the Exchange and Exchange members as a result of these post-trade date submissions; (2) make trade comparisons on the CBOE more efficient in terms of the time and expense involved in trade processing; and (3) reduce the risk exposure to investors and Exchange clearing members. Additionally, the Commission continues to believe that the Pilot Program does not raise any due process concerns because of the availability of the verification and appeals processes pursuant to Chapter XIX of CBOE's rules.<sup>22</sup>

The Commission believes that the proposed caps on the monthly as-of-add fees that can be assessed against members adequately addresses one of the concerns previously noted by the Commission of assessing inordinately high, or punitive, monthly "fees" for violations of Exchange rules.<sup>23</sup> By placing the proposed caps on the maximum monthly as-of-add fees, the Commission believes that it is appropriate for the Exchange to continue to classify these assessments as fees, rather than requiring the Exchange to institute disciplinary proceedings and to assess fines against members each time they submit as-of-adds in violation of Exchange rules.<sup>24</sup> Additionally, the proposal to incorporate the Pilot Program into the Minor Rule Plan under Rule 17.50 further minimizes the Commission's concerns about classifying these assessments as fees rather than fines.<sup>25</sup> The proposal

<sup>13</sup> See *supra* notes 6 and 7.

<sup>14</sup> See Amendment No. 1, *supra* note 3. These fines would be assessed on a rolling basis. For example, an individual member who is cited for a first offense for a minor rule violation for exceeding the nominal allowable number of as-of-adds by three or more times during each of December and January would be fined for a second offense if that member again exceeds the allowable number of as-of-adds by three or more times during February. Telephone conversation between Dan Schneider, Schiff Hardin & Waite, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on December 8, 1994.

<sup>15</sup> See *supra* notes 6 and 7.

<sup>16</sup> The CBOE has agreed to issue a Regulatory Circular to members describing the portions of the proposal approved herein, describing the portion of the proposal to incorporate the Pilot Program into the Minor Rule Plan, emphasizing that serious instances or extended periods of late submissions will be subject to investigation and possible disciplinary action notwithstanding Rule 17.50(g), and highlighting that all members assessed a fee pursuant to the Pilot Program may submit a request for verification and may appeal the fees assessed pursuant to Chapter XIX of the CBOE Rules.

<sup>17</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>18</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>19</sup> See Amendment No. 1, *supra* note 3.

<sup>20</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>21</sup> See *supra* note 5.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> The Commission notes that its findings herein are limited to as-of-add submissions. For violations of other Exchange rules, it may be inappropriate to allow the Exchange to assess fees to encourage compliance rather than instituting disciplinary proceedings against members for such violations.

<sup>25</sup> The Commission notes that although the proposal to incorporate the Pilot Program into the

ensures that at some objective level, members will be cited for violating Exchange Rule 6.51.<sup>26</sup> In connection with as-of-add submissions. The Commission believes that the prospect of being fined for a rule infraction, particularly where the as-of-adds reflect a significant pattern of abuse in violation of the requirements of Rule 6.51, will act as a further incentive for encouraging exchange members to reduce their as-of-add submissions.

Furthermore, the Commission does not believe that the fact that the proposed monthly cap as-of-add fees is higher for clearing members (\$1000) than for individual members (\$500) raises significant regulatory concerns. In its present form, the Pilot Program distinguishes between clearing members and individual members in two respects. First, the monthly allowable percentage of as-of-adds is higher for individual members than for clearing members.<sup>27</sup> Second, the per-trade fee amount assessed against individual members (\$10) is higher than that assessed against clearing members (\$3). Because the average fee assessed against clearing members during the period between October 1, 1993, and September 30, 1994, (\$307.51) was higher than the average fee assessed against individual members (\$104.50),<sup>28</sup> the Commission does not disagree with the Exchange's determination that it is reasonable for the monthly cap applicable to clearing members to be higher than the cap applicable to individual members. Moreover, even though the Exchange represents that most as-of-adds are the result of late submission by individual members rather than by clearing members, the Commission believes that clearing members have some ability to encourage individual members to reduce their number of as-of-adds, for example, by charging fees to individual members who regularly submit as-of-adds to the clearing member for processing. Additionally, assuming that the portion of the proposal to incorporate violations of Rule 2.26 into the Minor Rule Plan is ultimately approved,<sup>29</sup> the Commission notes that it will be possible for individual members who submit a significant number of as-of-adds in

relation to their total number of monthly trades to be fined for violating the Minor Rule Plan without reaching the cap on fees pursuant to Rule 2.26. Finally, the fines proposed for violating the Minor Rule Plan for as-of-add submissions are the same for individual members and for clearing members. Even with the lower monthly cap on fees, therefore, the Commission believes that the proposal provides significant incentives for individual members to reduce their as-of-add submissions. As a result, the Commission believes that the difference between the cap levels for individual members and clearing members is reasonable and consistent with the Act.

The Commission also notes that in prior extensions of the Pilot Program, the Commission expressed concern over the Exchange's inability to determine, without examining each individual trade, whether particular as-of-adds are submitted due to the fault of an individual member or that member's clearing firm.<sup>30</sup> As a result, in determining whether a member has exceeded its stated monthly percentage of allowable as-of-adds, each as-of-add processed by a clearing member is counted against both the clearing member and the individual member who executed the transaction. For several reasons, however, the Commission now believes that this does not prevent a finding that the Pilot Program is consistent with the Act. First, data gathered by the Exchange from the first year of operation of the Pilot Program support the Exchange's representation that most as-of-adds are the result of late submissions by individual members, not clearing firms. From October 1, 1993, through September 31, 1994, there were 463 assessments of fees against individual members pursuant to the Pilot Program but only 13 such assessments against clearing members.<sup>31</sup> Second, during that same period, only one individual member requested verification of the fee assessed by the Exchange and that member did not appeal the assessment upon receipt of verification from the Exchange.<sup>32</sup> Finally, the Commission has not received any comment concerning the Pilot Program, in general, or this aspect of the Pilot Program, in particular. As a result, the Commission does not believe that individual members are being damaged as a result of the CBOE's inability to efficiently identify the party actually responsible for each as-of-add, especially given that members may

request verification of, and may appeal, any as-of-add fee assessed by the Exchange.

Finally, the Commission believes that the proposal to add paragraph (d) to Rule 2.26 concerning waivers of the as-of-add fees in unusual circumstances is also consistent with the Act. Proposed paragraph (d) substantively mirrors paragraph (g) of Rule 2.30, which was previously approved by the Commission. Rule 2.30 is similar to Rule 2.26 in that both rules are concerned with the late submission of trade data.<sup>33</sup> As a result, the Commission believes that if Rule 2.30 can be waived in the event of exigent circumstances, a similar provision should also apply to Rule 2.26. The Commission believes that when unusual circumstances exist that affect the ability of a significant number of members to submit trade information to the Exchange in a timely manner it may not be appropriate to assess fees, and possibly fines (assuming the amendment to the Minor Rule Plan discussed herein is ultimately approved as adopted), against individual members and clearing members. The Commission expects the CBOE to use its power to waive as-of-add fees only in highly unusual circumstances. In addition, while the CBOE has indicated that the power to waive as-of-add fees will usually be used in conjunction with the similar power in Rule 2.30, the Commission expects the CBOE to examine each situation on its merits to determine whether just Rule 2.30 or both Rules 2.26 and 2.30 should be waived in a particular situation.<sup>34</sup>

The Commission finds good cause for approving the following portions of the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**: (1) The request for permanent approval of the Pilot Program; (2) the proposal to impose caps on the monthly fee that can be assessed against members; and (3) the portion adopting paragraph (d) to Rule 2.26 to allow the Exchange to waive application of the rule in unusual circumstances.

First, granting permanent approval of the Pilot Program will permit the Pilot Program to remain in effect without

Minor Rule Plan is consistent with the Commission's prior suggestions regarding the Pilot Program, for the reasons discussed below, this portion of the proposed rule change is being published for comment and is not being approved by the Commission on an accelerated basis herein with the remainder of the proposal.

<sup>26</sup> See *supra* note 4.

<sup>27</sup> See *supra* notes 6 and 7.

<sup>28</sup> See Pilot Report, *supra* note 10.

<sup>29</sup> See *supra* note 25.

<sup>30</sup> See *supra* note 5.

<sup>31</sup> See Pilot Report, *supra* note 10.

<sup>32</sup> *Id.*

<sup>33</sup> See *supra* note 12.

<sup>34</sup> For example, situations could arise for which it may be appropriate for the Exchange to waive Rule 2.30, but if the unusual circumstances last only a few hours, it may be inappropriate to conclude that trade data could not be submitted by most members on the same day that the trades occur. In such a situation, the Commission believes that it would not be appropriate for the Exchange to also waive Rule 2.26.

interruption. For the reasons discussed above and in prior orders concerning the Pilot Program,<sup>35</sup> the Commission believes that reducing the number of as-of-adds submitted to the Exchange may benefit investors by reducing the Exchange's processing costs, making the CBOE more efficient in terms of the time involved in trade processing, and reducing risk exposure to investors and Exchange member firms. Additionally, the Exchange has represented that no problems have arisen and no formal complaints have been received by the Exchange concerning the Pilot Program since its implementation.<sup>36</sup>

Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve, on an accelerated basis, that portion of the proposed rule change requesting permanent approval of the Pilot Program.

For the reasons discussed above, the Commission also believes that it is appropriate to accelerate approval of the proposal to impose caps on the monthly as-of-add fees assessed against members. The Commission believes that this portion of the proposal addresses a significant concern that the Commission previously raised regarding the Pilot Program by ensuring that members are not assessed fees that are inordinately high, or punitive.<sup>37</sup> The Commission continues to believe that it is inappropriate for the CBOE to promote and enforce compliance with Exchange rules solely through the assessment of fees. Further, this proposal is a limitation on the existing Pilot Program, which has no upper limit on the monthly fee that can be assessed. As a result, because the Commission has not received comment on the existing Pilot Program, the Commission believes it is appropriate to approve this aspect of the proposal on an accelerated basis.

With regard to proposed paragraph (d) to Rule 2.26, the Commission believes that this amendment will promote uniformity between Rule 2.26 and existing Rule 2.30. The logic for waiving application of Rule 2.30 in the existence of unusual circumstances also applies to Rule 2.26, *i.e.*, if circumstances prevent a significant number of members from processing trade information, it generally may be inappropriate to assess fees against those members for violating Rules 2.26 and 2.30. Accordingly, the Commission believes it is appropriate to approve this portion of the proposal on an accelerated basis in order to promote uniformity between the Exchange's

rules and thus minimize potential confusion, and to avoid inconsistent results where for the same set of "unusual circumstances," the Exchange is able to waive application of Rule 2.30 but not Rule 2.26.<sup>38</sup>

At this time the Commission is not approving that portion of the proposed rule change that would incorporate the Pilot Program into the Minor Rule Plan. Although the Commission believes that this portion of the proposal addresses suggestions previously noted by the Commission concerning the Pilot Program, the Commission believes that prior to approval, Exchange members should be given adequate notice of, and an opportunity to comment on, proposals that could subject them to disciplinary sanctions. As a result, the Commission expects the Exchange to distribute to its members notice of the rule change as approved herein and notice of the proposal to incorporate the Pilot Program into the Minor Rule Plan.<sup>39</sup> Moreover, the Exchange's request for accelerated approval of the proposal was for the sole purpose of avoiding procedural and accounting problems that would result from a lapse in the Pilot Program.<sup>40</sup> The Commission believes this concern has been adequately addressed by accelerating permanent approval of the Pilot Program

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing proposed rule change and Amendment No. 1 thereto. 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. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 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-94-50 and should be submitted by January 31, 1995.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act<sup>41</sup> that the following portions of the proposed rule change (SR-CBOE-94-50), are approved: (1) The amendments to CBOE Rule 2.26 placing a ceiling on the monthly as-of-add fees that can be assessed against individual members and clearing members, and allowing the Exchange to suspend the rule in exigent circumstances; and (2) permanent approval of the Pilot Program.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>42</sup>

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

[FR Doc. 95-483 Filed 1-11-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35192; File No. SR-CBOE-94-44]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Market Maker Appointments

January 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 14, 1994, 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 self-regulatory organization. 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 CBOE Rule 8.3(c) concerning the number of trading stations at which a single market maker's appointed classes of options are traded.

##### 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

<sup>35</sup> See *supra* note 5.

<sup>36</sup> See Pilot Report, *supra* note 10.

<sup>37</sup> See *supra* note 5.

<sup>38</sup> See *supra* note 34 and accompanying text.

<sup>39</sup> See *supra* note 16.

<sup>40</sup> See Amendment No. 1, *supra* note 3.

<sup>41</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>42</sup> 17 CFR 200.30-3(a)(12) (1993).

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