

interruption. For the reasons discussed above and in prior orders concerning the Pilot Program,³⁵ 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.³⁶

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.³⁷ 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 2.26.³⁸

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.³⁹ 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.⁴⁰ 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 Act⁴¹ 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.⁴²

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"),¹ 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

³⁵ See *supra* note 5.

³⁶ See Pilot Report, *supra* note 10.

³⁷ See *supra* note 5.

³⁸ See *supra* note 34 and accompanying text.

³⁹ See *supra* note 16.

⁴⁰ See Amendment No. 1, *supra* note 3.

⁴¹ 15 U.S.C. 78s(b)(2) (1988).

⁴² 17 CFR 200.30-3(a)(12) (1993).

¹ 15 U.S.C. 78s(b)(1).

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 self-regulatory organization 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 revise CBOE Rule 8.3(c) to give the Market Performance Committee ("MPC") authority to designate the maximum number of trading stations at which a single market maker's appointed classes of options are traded, and to add Interpretation and Policy .02 to CBOE Rule 8.3 to state that the MPC has designated such maximum number as ten trading stations. CBOE Rule 8.3 currently sets a five station upper limit on the maximum number of trading stations that may be covered by a single market maker's appointment.

In light of the recent and anticipated increases in both the number of options classes traded on the Exchange and the number of trading stations on the floor, the Exchange has determined that it needs greater flexibility to increase this limit from time to time in order to be able to respond promptly to any need for greater market maker participation that may result from such expansion. By granting authority to fix this number to the MPC, which already has the authority to grant exceptions to the current five-station limit on a case-by-case basis, the Exchange believes it will have achieved the flexibility it needs. When and if the MPC changes the limit from ten stations as it is here proposing, the new limit will be reflected in a revision to Interpretation and Policy .02 under the Rule filed under Section 19(b)(3)(A)(i) of the Act as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of Rule 8.3.²

The CBOE believes that the proposed increase in the current limit under Rule 8.3(c) from five to ten stations reflects that, in light of the expansion of the number of options classes traded in CBOE's marketplace and in the number of stations at which options are traded, a five-station limit is unduly restrictive and places CBOE's market makers at a

competitive disadvantage in relation to options market makers on other exchanges. Currently, the five-station maximum limits an individual market maker's affirmative market making obligations to, at most, slightly more than 9% of the trading stations on the floor, or less than 25% of all CBOE classes. To assure adequate market maker coverage of all classes traded on the CBOE, enlargement of the current five station limit to ten stations is needed.

In addition, CBOE believes that the importance of maintaining comparability among exchanges regarding the percentage of the classes traded in which a market maker may hold an appointment is not limited to general reasons of competitive fairness and equality. Comparability is also important because under the new short sale rule applicable to stocks traded in the Nasdaq market, the exception to the short sale rule for options market makers only applies to stocks underlying options in which the market maker holds an appointment. So long as CBOE market makers limited to holding appointments in less than 25% of the classes traded on the Exchange, CBOE's market makers will be at a competitive disadvantage in respect of their ability to hedge their options positions pursuant to the market maker exemption from the NASD short sale rule. CBOE recently filed a proposed rule change that would amend its Rule 15.10 by eliminating the provision that restricts the market maker exemption to Nasdaq National Market securities underlying options traded at no more than three stations. Instead, the market maker exemption would be available for all options classes to which a market maker holds an appointment.³

The proposed amendment is intended to enhance the ability of the Exchange to provide fair and orderly markets in options and to provide for competitive equality among exchanges, and therefore the Exchange believes that its proposal is consistent with the promotion of just and equitable principles of trade and the protection of investors and the public interest as required by Section 6(b)(5) of the Act.

(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.

(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

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 (ii) as to which the self-regulatory organization 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, 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 above-mentioned self-regulatory organization. All submissions should refer to File No. SR-CBOE-94-44 and should be submitted by February 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-717 Filed 1-11-95; 8:45 am]

BILLING CODE 8010-01-M

² Although the CBOE has stated its desire to rely on section 19(b)(3)(A) of the Act if it should seek to change the limit, the Commission has requested that the CBOE provide it with additional information to justify the appropriateness of such reliance.

³ See Securities Exchange Act Release No. 34947 (November 7, 1994), 59 FR 59262 (File No. SR-CBOE-94-38), proposing to amend CBOE Rule 15.10(c)(2)(ii)(B).

⁴ 17 CFR 200.30-3(a)(12) (1993).