

concerned and with the general purposes of the Act. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants submit, for the reasons discussed below, that their request satisfies these standards. Applicants believe that compliance with rule 17a-7(a)-(f) will ensure that the Proposed Transaction is effected on terms that are fair and reasonable and do not involve overreaching. Applicants believe that because the Proposed Transaction involves a purchase of readily marketable securities for cash and because the Proposed Transaction has been reviewed and approved by the Board, there is no danger that any affiliated person will benefit at the expense of the Portfolio and its interest holders.

#### Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

The proposed Transaction will comply with the terms of rule 17a-7(a) through (f).

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-24814 Filed 9-15-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following open meeting during the week of September 21, 1998.

An open meeting will be held on Wednesday, September 23, 1998, at 10:00 a.m.

The subject matter of the open meeting scheduled for Wednesday, September 23, 1998, at 10:00 a.m., will be:

Consideration of whether to adopt an amendment to Rule 102(e) of the Commission Rules of Practice clarifying the Commission's standard for determining when accountants engage in "improper professional conduct." FOR FURTHER INFORMATION CONTACT: Michael J. Kingin, Associate Chief Accountant, Office of the Chief Accountant at (202) 942-0890.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: September 14, 1998.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-24916 Filed 9-14-98; 12:45 pm]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40419; File No. SR-CBOE-98-35]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Floor Brokerage Subsidies

September 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 27, 1998, 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 Exchange proposes to adopt a new rule that would allow market-makers in a trading crowd to subsidize the activity of floor brokers who represent orders in that crowd. The proposed rule would also allow market-makers to determine to subsidize the execution of orders from the Exchange's public customer limit order book. Set forth below is the text of the proposed rule.

\* \* \* \* \*

(The entire rule is new.)

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

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

## Chicago Board Options Exchange, Inc. Rules

### Chapter II—Organization and Administration

*Part C—Dues, Fees, and Other Charges; Market-Maker Surcharge for Brokerage*

Rule 2.40

(a) Definitions.

(i) Stationary Floor Broker. A Stationary Floor Broker ("SFB") in a particular option class is a floor broker (A) who has established a business in the trading crowd for that class of accepting and executing orders for members or registered broker-dealers and (B) who transacted at least 80% of his orders for the previous month in the trading crowd at which that option class is traded.

(ii) Resident Market-Maker. A Resident Market-Maker in a particular class of options is a market-maker who transacted at least 80% of his market-maker contracts in option classes traded in the trading crowd where the particular option class is traded in the prior calendar month.

(iii) ORS Orders. For purposes of this Rule, an ORS order is an order that is (A) sent over the Exchange's Order Routing System, (B) given an ORS identification number and (C) not an order of the firm for which the SFB acts as a nominee or for whom the SFB has registered his membership.

(iv) Standard OBO Rate. The Standard OBO Rate is any rate for OBO floor brokerage established by the Exchange for the particular equity option class traded on the Exchange floor.

(b) Generally.

The Resident Market-Makers for a particular option class may vote, as set forth in paragraph (d) of this Rule, to impose a fee on a per contract basis for every contract traded by every market-maker, whether in-person or by order, in that option class during the period for which the fee is instituted. This fee will be collected by the Exchange and used to reimburse the Exchange to the extent the market-makers vote to reduce the Exchange's book rate pursuant to paragraph (g) of this Rule. Any amount remaining after the Exchange has been reimbursed will be paid to every SFB who executed an ORS Order in that option class during the relevant period of time. To the extent more than one SFB executed ORS Orders during the relevant period, this amount remaining shall be paid to the SFBs on a pro rata basis based on the number of ORS contracts executed by the respective SFBs during the period. The fee likely will be assessed after the end of the

month in which transactions on which the fee was based occurred.

(c) Time Period.

The fee shall be instituted for a minimum period of one month. The fee voted upon shall remain effective until the next vote is held.

(d) Vote.

(i) Any Resident Market-Maker may recommend a fee amount by the Friday prior to the vote or by any other time and date required by the OBO. The vote of the Resident Market-Makers to institute the fee shall take place at the station where the applicable option class is traded on the Tuesday of expiration week, or on any other day selected by the OBO for that option class. The Order Book Official ("OBO") shall provide 24 hour notice of the time and date of the vote to the trading crowd if the vote is to be held at a different time or on a different day. The OBO shall determine how the vote shall be conducted. Any Resident Market-Maker personally present at the trading station when the vote is conducted may vote on the amount of the fee to be assessed for the next period.

(ii) Each Resident Market-Maker's vote shall be weighted in accordance with that Market-Maker's percentage of the contracts traded in the relevant option class during the six calendar months prior to the month in which the vote is taken. For example, the vote of a Market-Maker that traded 5% of the contracts in the previous month will be counted five times as much as the vote of a Market-Maker that traded 1% of the contracts in that options class over the previous six calendar months. In the case of a class that has not traded for six months, the weighting shall be determined in accordance with the respective number of trades for the period of time the option class has traded. For a class that has not traded at all, all Resident Market-Maker's votes shall be weighted equally.

(iii) Any fee amount that receives a majority of the votes cast by weight shall be the fee effective for the following calendar month. If any fee amount does not receive a majority by weight on the first ballot, the OBO may conduct subsequent ballots with the proposed fees receiving the most votes by weight or may solicit Resident Market-Makers for other proposed fee amounts.

(e) Option Classes.

The appropriate Floor Procedure Committee may specify those option classes on which Resident Market-Makers may vote to assess a fee pursuant to paragraph (d) of this Rule.

(f) Floor Brokerage Commission.

Although any SFB who executes ORS Orders in the crowd will be paid the appropriate fee, each SFB may charge any commission rate that floor broker so desires.

(g) Book Brokerage Rates.

The Resident Market-Makers for a particular option class may vote to reduce the Exchange's OBO brokerage rate for that option class pursuant to the terms of the vote in paragraph (d). If the Resident Market-Makers vote to reduce the OBO brokerage rate the Exchange will make the appropriate filing as required by the Exchange Act. To the extent the Resident Market-Makers vote to lower the rate below the Standard OBO Rate, the market-makers who trade that option class shall reimburse the Exchange for the difference pursuant to any fee instituted in paragraph (b). If the Exchange determines on its own to reduce the OBO brokerage rate for a particular class below the Standard OBO Rate the market-makers will not be responsible for reimbursing the Exchange.

\* \* \* \* \*

## 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. 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

Many options traded on the CBOE floor are traded in crowds in which the quotes are established in a competing market-maker system. The Exchange believes the competitive market-maker system has served to provide deep and liquid markets and extremely competitive quotes to the benefit of the Exchange's customers throughout the twenty-five year history of the Exchange. The Exchange has learned, however, that in recent years it has become increasingly difficult for the floor brokers who service customer orders in the Exchange's market-maker crowds to compete in brokerage rates against options' specialists at other exchanges in multiply-traded classes.

Unlike the situation in market-maker crowds, specialists control both the agency and principal functions on other exchanges. As a result, these specialists have the luxury of lowering their brokerage rates to induce firms to send them the firm's order flow. These specialists can still make a comfortable living, even while they reduce their brokerage rates below a level at which the activity could be provided economically as an independent venture, through the income produced from the principal part of the business. The stationary floor brokers on the CBOE floor, however, do not have the ability to reduce their rates to compete with these specialists and still survive, because (unlike these specialists on other exchanges) they have no dealer profits. In some cases, these floor brokers have had to rely on the superior service provided by the CBOE market-maker system to attract order flow even in situations where their rates may be higher than those charged by specialists on other exchanges. In order to allow the Exchange's stationary floor brokers to compete better against other exchange specialists without sacrificing the many advantages inherent in having a number of option classes trade in the competing market-maker crowds, the Exchange has determined to allow its market-makers to provide a subsidy to the floor brokers to provide them the ability to lower their rates and still earn an acceptable level of income.

#### a. Generally

The proposed rule would allow certain market-makers in a trading crowd to vote to impose a fee on a per contract basis for every contract traded by every market-maker, whether by person or by order, in a particular option class. This fee will be collected by the Exchange and will be used for two purposes. First, the amount collected will be used to reimburse the Exchange to the extent the market-makers vote to reduce the rate charged by the Exchange to execute Order Book Official ("OBO") orders. The amount paid the Exchange will be the amount of the Standard OBO Rate minus the rate voted on by the market-makers multiplied by the number of contracts executed by market-makers, in person or by order. Any remaining amount of the subsidy collected will then be paid to the stationary floor broker as an inducement for that floor broker to reduce his brokerage rates. The Exchange believes the proposed rule will allow the Exchange's market-maker crowds to compete effectively for order flow against specialists from other exchanges by allowing the brokerage

rates to be reduced to competitive levels. It should be noted that the stationary floor broker would be entitled to charge whatever brokerage rate he feels appropriate, but it is expected that the floor broker will consider the extent to which his business is being subsidized by the market-makers in the crowd in making that determination.

Generally, there is only one stationary floor broker in a trading crowd. In some cases, where there is more than one stationary floor broker in a trading crowd, the amount remaining after the Exchange has been reimbursed will be paid to the stationary floor brokers on a pro rata basis based on the number of Order Routing System ("ORS") Orders executed by each floor broker. For the sake of ease of administration, the fee likely will be assessed after the end of the month in which transactions on which the fee was based occurred.

#### b. Definitions

Proposed new Rule 2.40(a)(i) defines the category of brokers who will be entitled to receive part of the market-maker subsidy as a Stationary Floor Broker ("SFB"). An SFB in a particular option class is a floor broker (A) who has established a business in the trading crowd for that class of accepting and executing orders for members or registered broker-dealers, and (B) who transacted at least 80% of his orders for the previous month in the trading crowd at which that option class is traded. The limitations in the definition are designed to ensure that those floor brokers who have made a commitment to the particular option class and who are willing to accept orders from a wide variety of market participants are the ones who will benefit from the subsidy. It is these floor brokers whose reduced brokerage rates for a class of options will be most likely to attract or retain order flow in that class, which will be of benefit to the market-makers in the trading crowd for that class of options.

Proposed new Rule 2.40(a)(ii) defines that category of market-makers who will be entitled to vote on the market-maker surcharge and on any reduction from the Standard OBO Rate as a Resident Market-Maker. A Resident Market-Maker is defined as a market-maker in a particular option class who transacted at least 80% of his market-maker contracts in option classes traded in the trading crowd where the particular option class is traded in the prior calendar month. The limitation in this definition ensures that those market-makers who have made a commitment to fulfilling their market-maker obligations in the relevant trading crowd are the ones who determine to

what extent they will be willing to compete to attract business to the trading crowd.

Proposed new Rule 2.40(a)(iii) defines the types of orders for which SFBs can earn a subsidy. An ORS Order, for purposes of this rule, is an order sent over the Exchange Order Routing System and given an ORS identification number and that is not an order of the firm for whom the SFB acts as a nominee or for whom the SFB has registered his membership. The Exchange decided to make the determination on the amount of a subsidy an SFB receives by reference to the number of ORS contracts that SFB executed because the rate the SFB charges for ORS orders is most likely to be the rate which will attract the most order flow. Non-ORS orders—such as spreads, large telephone orders, and complex or contingent orders—may require more effort and expertise from the floor broker and are not as sensitive to rates as to level of service. In addition, the Exchange determined not to allow ORS orders executed by an SFB on behalf of the firm for whom the SFB is a nominee or for whom he has registered his membership because these orders will be executed by the SFB by virtue of the relationship and not by virtue of the rate charged.

#### c. Option Classes/Time Period

The Exchange has determined to allow the appropriate Floor Procedure Committee to determine on which classes of options the market-makers will have the authority to vote to assess a fee and to reduce the OBO brokerage rate. The Exchange believes that it is likely that the program will be started in a few options classes initially to determine the effects of the program on allowing the market-maker crowds to compete with specialists from other options exchanges. Over time it is expected that the program may be expanded more broadly across the floor. Any subsidy agreed to be paid by the market-makers would have to be in effect for at least one month in order not to disrupt normal Exchange billing and accounting procedures.

#### d. Voting Procedures

Proposed new Rule 2.40(d)(i) requires that the vote of the Resident Market-Makers to institute a fee shall take place in the crowd where the applicable option class is traded and the vote will be conducted by the OBO in that option class. The normal date and time set for the vote will be 8:15 a.m. on the Tuesday of expiration week. Expiration week is chosen because that is the week when the attendance is generally

highest. The OBO, however, can set a different time and/or date by providing a 24-hour notice of the different time and/or date. Any Resident Market-Maker in the crowd at the time of the vote will be entitled to vote on the amount of the fee or on any reduction in the OBO brokerage rate for the next calendar month. The votes shall be weighted in accordance with the number of contracts traded by the particular market-maker in the relevant option class in the six calendar months prior to the vote. For example, the vote of a Resident Market-Maker that traded 5% of the contracts in the previous six calendar months will be counted five times as much as the vote of a Market-Maker that traded 1% of the contracts in that options class over the previous six calendar months. In the case of a class that has not traded for at least six months, the weighting shall be determined in accordance with the respective number of trades for the period of time the option class has traded. For a class that has not traded at all, all Resident Market-Makers' votes shall be weighted equally.

Any proposed fee amount that receives a majority of the weighted votes shall become effective for the next calendar month. If any fee amount does not receive a majority by weight on the first ballot, the OBO may conduct subsequent ballots by seeking approval of the proposed fees receiving the most votes by weight or by seeking approval for other fee amounts proposed by Resident Market-Makers. Similarly, the Resident Market-Makers may vote to reduce the OBO brokerage rate to the rate receiving the majority of the weighted votes being effective for the next calendar month. Again, the OBO may conduct subsequent votes if no proposed OBO brokerage rate received the majority of the weighted votes. If the Exchange determines to reduce the OBO brokerage rate for a particular class of options to a new lower Standard OBO Rate, the market-makers will not be responsible for reimbursing the Exchange.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>(3)</sup> of the Act in general and further the objectives of Section 6(b)(5)<sup>(4)</sup> in particular in that they are designed to promote just and equitable principles of trade and to protect investors and the public interest.

<sup>3</sup> 15 U.S.C. 78f(b).

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

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

The proposed rule change is anticipated to enhance the ability of market-makers to compete with the other exchanges for order flow.

### *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

(ii) as to which the self-regulatory organizations 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 proposal 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. 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 will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-98-35 and should be submitted by October 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-24819 Filed 9-15-98; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40422; International Series Release No. 1156; File No. SR-EMCC-98-07]

### **Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change To Require Members To Maintain a Pre-Billing Deposit**

September 9, 1998.

On July 24, 1998, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-EMCC-98-07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on August 14, 1998.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

#### **I. Description**

Under the rule change, EMCC will require each member to maintain on deposit with EMCC an amount equal to three times the member's average monthly EMCC bill ("pre-bill amount"). The purpose of the pre-bill amount is to provide EMCC with additional operating cash. The average monthly bill will be based on a member's three most recent monthly EMCC bills, excluding all pass-through charges. If a member does not have a three month billing history (e.g., a new member), EMCC will estimate the member's average monthly bill in calculating the pre-bill amount. Members will continue to be billed monthly based on their actual use of EMCC's services.

EMCC will recalculate the pre-bill amount quarterly. If a member's recalculated pre-bill amount is greater than its prior pre-bill amount, the

amount of such difference will appear on the member's next monthly bill as an additional charge. Conversely, if a member's recalculated pre-bill amount is less than its prior pre-bill amount, the amount of such difference will appear on the member's next monthly bill as a credit.

#### **II. Discussion**

Section 17A(b)(3)(D) of the Act<sup>3</sup> requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The Commission believes that the proposed rule change is consistent with EMCC's obligations under Section 17A(b)(3)(D) because the pre-bill amount will be calculated based on each member's use of EMCC's services. In addition, the rule change provides for quarterly recalculation of the pre-bill amount, which should help ensure that each member's pre-bill amount accurately reflects the current level of its use of EMCC's services.

EMCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow EMCC to collect the pre-bill amounts promptly which should increase its liquidity resources.

#### **III. Conclusion**

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>4</sup> and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-98-07) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-24815 Filed 9-15-98; 8:45 am]

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<sup>5</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 40311 (August 7, 1998), 63 FR 43737.

<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 17 CFR 200.30-3(a)(12).