

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-99-09 and should be submitted by May 11, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41270; File No. SR-CBOE-99-08]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees

April 9, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> ("Act"), and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 25, 1999, 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 Exchange. On March 26, 1999, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 is proposing to amend certain fees,<sup>4</sup> and to amend its

Prospective Fee Reduction Program and Customer "Large" Trade Discount Program. 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 Exchange 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 this proposed rule change is to make certain fee changes and to amend the Exchange's Prospective Fee Reduction Program and Customer "Large" Trade Discount Program. The foregoing fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22 and took effect on March 1, 1999.

The Exchange is amending the following fees: (1) Equity Customer Transaction Fees are reduced from \$.15/.30 to a flat \$.09 per contract side,<sup>5</sup> Trade Match and Floor Brokerage Fees will remain at \$.05 and \$.03, respectively; (2) Marketable Equity Customer orders of thirty contracts or less will not be billed the reduced customer transaction fee noted above if those orders reach CBOE's trading posts through the automated Order Routing System ("ORS"); (3) Equity Order Book Official ("OBO") Execution Fees are reduced from \$.45 per contract with free execution at the opening, to \$.20 for all contracts, regardless of when they are executed; (4) Equity Market Maker Fees are increased to \$.19 per contract side from \$.05 per contract side; (5) OEX Market Maker Fees are increased to \$.15 per contract side from \$.05 per contract side; (6) SPX Market Maker Fees are

exclusively to member fees, this proposed rule change is properly filed under section 19(b)(3)(A)(ii) of the Act, 15 U.S.C. 78s(b)(3)(A)(ii). Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, CBOE, and Joseph P. Morra, Attorney, Division, Commission, on March 3, 1999.

<sup>5</sup> A rate differential will no longer exist based on the dollar amount of the premium paid.

increased to \$.15 per contract side from \$.07 per contract side; (7) Equity Member Firm Proprietary Fees are increased from \$.06 to \$.19 per contract side to match market maker rates; (8) OEX Member Firm Proprietary Fees are increased from \$.06 to \$.15 per contract side to match Index market maker rates; and (9) Member Firm Proprietary Fees for SPX, DJX and all other Indexes are increased from \$.10 to \$.15 per contract side to match Index market maker rates. Trade Match fees remain at \$.05 per contract side. Member Firm proprietary rates remain unchanged when the firm is facilitating its own customer order. Index Customer Transaction Fees are unchanged.

Previously, it has been CBOE's policy to assign the customer rate to option orders from broker-dealers. Under the revised fee schedule, broker-dealer marketable equity option orders of thirty contracts or less that are routed through ORS will not be assessed any transaction fee. However, non-marketable broker-dealer equity option orders for more than thirty contracts will be charged the new higher market maker/firm rate of \$.19 instead of the new lower customer rate of \$.09.

The Exchange's Prospective Fee Reduction Program for Trade Match Fees and Member Dues currently provides that if at the end of any quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-to-date basis exceeds one of certain predetermined volume thresholds, the Exchange's Trade Match Fees and Member Dues will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. Effective March 1, 1999 the Program proposed to be is suspended for the remainder of Fiscal Year 1999 ("FY99").<sup>6</sup>

The Exchange's Customer "Large" Trade Discount Program currently provides for discounts on the transaction fees that CBOE customers are assessed with respect to public customer orders for 500 or more contracts. Specifically, for any month during which the Exchange's average contract volume per day exceeds one of certain predetermined volume thresholds, the transaction fees that are assessed by the Exchange in that month with respect to public customer orders for 500 or more contracts are subject to a discount in accordance with a discount schedule. The Program is proposed to be suspended for equity option orders only for the remainder of FY99, effective March 1, 1999.

<sup>6</sup> CBOE's FY99 terminates on June 30, 1999.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Letter from Debora E. Barnes, Senior Attorney, CBOE, to David Sieradzki, Special Counsel, Division of Market Regulation ("Division"), Commission, dated March 25, 1999 ("Amendment No. 1"). Amendment No. 1 is a technical amendment to add the Exchange's statement on burden on competition, which was inadvertently omitted.

<sup>4</sup> The Exchange represents that, although some of the fees in this filing are referred to as customer fees, they are charged to members. As a result, the Commission notes that, as this filing relates

The proposed amendments are the result of a recommendation made by the Exchange's Financial Planning Committee to the Board of Directors. The amendments are structured to fairly allocate the costs of operating the Exchange in light of competitive concerns.

The proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>8</sup> 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.

#### *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<sup>9</sup> pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph(f) of Rule 19b-4 thereunder.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if 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.

### **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 20549-0609. Copies of the submission, all subsequent amendments, all written

statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR-CBOE-99-08, and should be submitted by May 11, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**

*Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-41277; File No. SR-Phlx-99-02]

#### **Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Change the Required Minimum Value Size for an Opening Transaction in FLEX Equity Options**

April 13, 1999.

#### **I. Introduction**

On January 19, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to reduce the required minimum value size for an opening transaction in FLEX Equity Options. The **Federal Register** published the proposed rule change for comment on March 11, 1999.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

#### **II. Description of Proposal**

The Exchange is proposing to change the minimum value size for opening transactions, other than FLEX Quotes responsive to a FLEX Request for

Quotes, in any FLEX equity option series in which there is no open interest at the time the Request for Quotes is submitted. Currently, under Exchange Rule 1079 the minimum value size for these opening transactions is 250 contracts. The Exchange is proposing to change the minimum value size for these transactions to the lesser of 250 contracts or the number of contracts overlying \$1 million of the underlying securities.

The Exchange is proposing this change because it believes the current rule is unduly restrictive. The rule was originally put in place to limit participation in FLEX equity options to sophisticated, high net worth individuals.<sup>4</sup> The Exchange believes, however, that limiting participation in FLEX equity options based solely on the number of contracts purchased may diminish liquidity and trading interest in FLEX equity options on higher priced equities. The Exchange believes the value of the securities underlying the FLEX equity options is an equally valid restraint as the number of contracts and, if set at the appropriate limit, can also prevent the participation of investors who do not have adequate resources. In fact, the limitation on the minimum value size for opening transactions in FLEX market index options and FLEX industry index options is tied to the same type of standard—the underlying equivalent value.<sup>5</sup> The Exchange believes the number of contracts overlying \$1 million in underlying securities is adequate to provide the requisite amount of investor protection. An opening transaction in a FLEX equity option series on a stock priced at \$40.01 or more would reach this \$1 million limit before it would reach the contract size limit, *i.e.*, 250 contracts times the multiplier (100) times the stock price (\$40.01) totals \$1,000,250 in underlying value.

Currently, an investor can purchase 250 contracts in a FLEX equity series on lower priced stocks, meeting the minimum requirement without reaching an underlying equivalent value of \$1 million. For example, a purchase of FLEX equity options overlying a \$10 stock is permitted although the underlying value for the options would be \$250,000, *i.e.*, 250 contracts times the multiplier (100) times the stock price (\$10). Conversely, under the proposed amendment, a participant could open a new FLEX equity option series overlying a \$110 stock with a trade of

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f).

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

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

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

<sup>3</sup> Exchange Act Release No. 41136 (March 3, 1999), 64 FR 12203 (March 11, 1999).

<sup>4</sup> Exchange Act Release No. 37691 (September 17, 1996), 61 FR 50060 (September 24, 1996) (adopting SR-Phlx-96-38).

<sup>5</sup> See Exchange Rule 1079(a)(8)(A)(i).