

and (c) that applicants obtain any required exemption from the Commission under section 17(a) of the Act. Under the Agreements, a majority of the Boards may terminate the Agreements with respect to the Acquiring Fund or Acquiring Portfolio or Acquired Fund or Acquired Portfolio, as appropriate, at any time before the Reorganizations if (i) the party's conditions precedent are not satisfied or (ii) the Boards determine that the consummation of the applicable Reorganization is not in the best interests of shareholders. Applicants will not make any material changes to the Reorganizations without Commission approval.

9. On April 23, 1999, definitive proxies were filed with the Commission and proxies were mailed to shareholders of the Acquired Funds on June 2, 1999. At a special meeting of shareholders held on August 5, 1999 the shareholders of the Acquired Funds approved the Agreement.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a-8 in connection with the Reorganizations because the Funds and the Portfolios may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or

common officers. Applicants state that Norwest Bank, NIM, and Wells Fargo are under common control and Norwest Bank may be deemed to have an indirect interest in the assets of the Norwest Plans. Applicants further state that because the Norwest Plans own more than 5% of each of the Acquired Funds and indirectly of the Acquired Portfolios, the Acquired Funds and Acquired Portfolios may be deemed affiliated persons of an affiliated person of the Acquiring Funds and Acquiring Portfolios.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganizations. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b) of the Act. The Board of each Fund and Portfolio, including the Independent Trustees, has determined that the Reorganization is in the best interests of the shareholders of the Fund or the Portfolio and that the interests of shareholders would not be diluted. Applicants also state that the Reorganizations will be effected based on the relative net asset values.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-21864 Filed 8-23-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41748; File No. SR-CBOE-99-34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Making Certain Changes to Its Fee Schedule

August 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 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 CBOE.³ 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 make certain changes to its fee schedule. The text of the proposed rule change is available at the Office of the Secretary, the 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The CBOE originally submitted the proposal on June 25, 1999. On August 12, 1999, the CBOE submitted a letter from Stephanie C. Mullins, Attorney, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, amending the filing ("Amendment No. 1"). In Amendment No. 1, the CBOE proposes (1) to make all fee changes listed in this filing retroactive as of July 1, 1999, except for the \$.35 paper ticket fee for manual trades by market-makers, (2) to withdraw the \$.35 paper ticket fee, (3) to delete the discussions of the paper ticket fee in the filing, and (4) to amend the text of CBOE Rule 2.22(b) to reflect the fee change for registered representatives and registered options principals. On August 16, 1999, the CBOE subsequently amended Amendment No. 1 with a phone call from Stephanie C. Mullins, Attorney, CBOE, to Joseph Corcoran, Attorney, Division, Commission. In the phone call, the CBOE proposes to reinstate the \$.35 paper ticket fee for manual trades by market-makers and make it effective as of January 24, 2000, and to amend the discussions of the paper ticket fee to reflect this amendment. Because of the substantive nature of the Amendments, the Commission deems the filing date to be August 16, 1999, the date of the final amendment.

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

1. Purpose

The purpose of this proposed rule change is to make certain fee changes and additions; to reinstate and amend the Exchange's Prospective Fee Reduction Program; and to renew and amend its Customer "Large" Trade Discount Program. The foregoing fee changes are being implemented by the Exchange pursuant to DBOE Rule 2.22 and, unless otherwise noted, will take effect on July 1, 1999.

The Exchange is amending the following fees. (1) The monthly fee to rent an SPX phone position will be increased from \$300 to \$500. (2) The monthly ABIL Brokerage Billing fee will be changed from .0075% of billed brokerage to \$.005 per contract. The minimum monthly fee will be increased from \$25 to \$50 and the maximum monthly fee will be increased from \$100 to \$200. (3) The monthly fee for ORS Analysis will be increased from \$50 to \$100. (4) The monthly fee for the Floor Efficiency Project ("FEP") will be increased from \$50 to \$100. (5) The subscriber fee for the Exchange Bulletin will be increased from \$100 per year to \$200 per year for each hard copy and from \$50 per year to \$100 per year for each electronic copy. Each member receives one free copy. This fee is charged to members for each additional copy and to non-member subscribers. (6) The Registered Representative fee will be increased from \$25 to \$35 for initial applications; and will be increased from \$20 to \$30 for annual and transfer applications.

The ABIL Brokerage fee is being changed from a percentage of billed brokerage to a fixed rate. This service fee has been a function of the dollars billed. The ABIL client base is facing increasing competitive pressures to lower their charges. As they do so, they bill less brokerage, and the ABIL service fee shrinks accordingly even though the new discounts require more programming support rather than less. The proposed new service fee for ABIL processing converts this variable cost to a fixed rate, whether the agent bills or not. The increase in the floor and cap levels reflect increased paper and processing expenses. Additionally, the ORS Analysis and FEP Report costs are being increased to cover costs of printing paper copies, and to standardize fees for all monthly reports at \$100.

In addition, the CBOE proposes to implement the following new fees. (1)

The fee to replace an I.D. Badge will be \$15; the fee to replace an Acronym badge will be \$15; and the fee for a temporary access badge for members will be \$10 (this fee will only apply for the fourth temporary access badge issued in a calendar year; the first three badges are free of charge). The cost for clerks and floor managers currently is \$10 for the fourth temporary access badge issued in a calendar year. (2) The following fee will be effective as of January 24, 2000. The Exchange proposes to assess a paper ticket fee of \$.35 on all market-maker transactions for a market-maker whose manual trades exceed 15% of the total amount of trades done by the market-maker in any given month. The purpose of this new fee is to encourage market-makers to utilize hand-held terminals for entering orders as opposed to paper tickets, while not penalizing members when occasional system outages occur. (3) The Exchange proposes to institute a program whereby members who fail to change their appointments on a timely basis or meet their in-person trading requirements would be assessed a fee of \$250 for any quarter. A letter of warning will be issued first followed by a \$250 fee for those that fail to comply. The Exchange believes this will affect fewer than 15 people per calendar quarter.

The Exchange proposes to reinstate and amend its Prospective Fee Reduction Program, subject to the Exchange having a minimum of \$10 million in working capital. The program was suspended on March 1, 1999, and the Exchange now proposes to reinstate and renew the program with amendments. The program 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 marker-maker transaction fees will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. Trading Volume in the fourth quarter of fiscal year 1999 will be used to determine the discount applied in the first quarter of fiscal year 2000. The CBOE proposes that the Program begin on July 1, 1999 at the beginning of the Exchange's 2000 fiscal year, and continue through the end of the Exchange's 2000 fiscal year, terminating June 30, 2000.

Specifically, the CBOE proposes the following: the threshold volume at which a \$.01 fee reduction applies will be 850,000 contracts; the threshold volume at which the \$.02 fee reduction applies will be 900,000 contracts; the threshold volume at which a \$.03 fee

reduction applies will be 950,000 contracts; and the threshold volume at which a \$.04 fee reduction applies will be 1,000,000 contracts and above.

The Exchange's Index Customer "Larger" Trade Discount Program currently provides for discounts on the transaction fees that CBOE members pay with respect to non-equity public customer orders for 500 or more contracts. Specifically, for any month 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 non-equity public customer orders for 500 or more contracts are subject to a discount in accordance with a discount schedule. The Program is scheduled to terminate on June 30, 1999 at the end of the Exchange's 1999 fiscal year. The CBOE proposes to amend the Program to provide that the Program will continue during the Exchange's 2000 fiscal year and will terminate on June 30, 2000. In addition to renewing the current fee discount percentages under the Program, CBOE proposes to amend the Program to increase by 100,000 contracts all the threshold levels to which the discount rates apply. For example, the threshold level is being increased from 650,000 to 750,000 contracts at which the 30% discount rate applies.

The proposed amendments are the product of the Exchange's annual budget review. The amendments are structured to fairly allocate the costs of operating the Exchange in the event that the Exchange experiences higher volume. In addition, although the proposed rule change provides that the Exchange's Fee Reduction Program and the Exchange's Index Customer "Large" Trade Discount Program will terminate at the end of the Exchange's 2000 fiscal year, the Exchange intends to evaluate these Programs prior to the beginning of the 2001 fiscal year and may renew these Programs in the same or modified form for the 2001 fiscal year.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

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

The Exchange 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 pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁷ 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 proposed rule change is consistent with the Act.⁸ 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-34 and should be submitted by September 14, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41746; File No. SR-CBOE-99-41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

August 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on July 30, 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 CBOE. On August 3, 1999, the CBOE filed with the Commission Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage*.⁴

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee ("Committee") approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract) ⁵
General Dynamics Corporation (GD)	\$0.07	\$0.00

⁵ The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from \$0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

The fee will be effective as of August 2, 1999.⁶ This fee will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)⁷ of the Act because it is designed to provide for the equitable allocation of

reasonable dues, fees, and other charges among its members.

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

The Exchange does not believe that the proposed rule change will impose

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1, notes that General Dynamics options became multiply-listed on August 2, 1999, and proposes that the surcharge take effect on that date. See letter from Stephanie Mullins, Attorney, CBOE, to Michael Walinskas, Associate Director,

Division of Market Regulation, Commission, dated August 2, 1999 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

⁶ See Amendment No. 1.

⁷ 15 U.S.C. 78f(b)(4).