

**FOR FURTHER INFORMATION CONTACT:** Marilyn D. Barker, Senior Counsel, (202) 942-0719, or Jennifer L. Swain, Assistant Director, at (202) 942-0719 (Division of Investment Management, Office of Investment Adviser Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch.

#### **Applicant's Representations**

1. IBRD was established by international treaty and its principal purpose is reducing poverty by promoting the economic development of member countries. IBRD has operated since 1946 under Articles of Agreement signed by the governments of its member countries, and its member countries own all of its capital stock.

2. IDA is an affiliated international organization, and membership in IDA is open only to members of IBRD. IDA was established in 1960, and its main goal is reducing poverty by promoting the economic development of its less developed member countries. IDA's members own all of its capital stock.

3. IBRD and IDA have the same staff. Applicants represent that since 1990, they have regularly offered multi-country technical assistance on reserves asset management to central banks of member countries, to other government institutions of member countries, and to other international organizations owned entirely by their sovereign nation members substantially all of which are also members of Applicants ("Sovereign Organizations"). Applicants represent this program's objectives is to assist central banks in adopting portfolio management techniques.

4. Applicants represent that they seek to expand their reserve assets technical assistance program to meet requests for more sustained services and requests for asset management. Applicants would provide the expanded services to member countries, central banks of member countries, other government institutions of member countries, and Sovereign Organizations. Applicants represent that they would manage only government or other public assets.

5. Applicants represent that they have also hosted financial assistance seminars for member countries, and that these courses have included asset and liability management, capital markets and derivatives activities, and middle and back office operations. Applicants represent that they now seek to provide detailed advice on debt management, hedging techniques for specific

transactions (e.g., derivatives), and capital market borrowing.

6. Applicants represent that they plan to charge a fee for the expanded services, to recover the costs associated with the expanded services, including the incremental costs of additional assets under management.

#### **Applicants' Legal Analysis**

1. Section 202(a)(11) of the Advisers Act defines "investment adviser" to mean "any person who, for compensation, engages in the business of advising others \* \* \* as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities \* \* \*."

2. Applicants propose to offer asset management and other advisory services on a regular, recurring basis and to charge recipients a fee for these services. Accordingly, Applicants would be "in the business of" providing investment advice for compensation and would be "investment advisers" for purposes of the Advisers Act.

3. Section 202(a)(11)(F) of the Adviser Act authorizes the Commission to exclude from the definition of "investment adviser" person that are not within the intent of section 202(a)(ii). Applicants request that the Commission issue an order under section 202(a)(11)(F) declaring them to be persons not within the intent of section 202(a)(11).

4. Applicants argue that the Advisers Act contemplates the regulation of private sector entities and was not intended to regulate an entity that is an organization of sovereign nations providing investment advice to its sovereign nation members, their central banks and other government institutions, and Sovereign Organizations. Applicants state that section 202(b) of the Advisers Act provides that the Advisers Act is not applicable to the "United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto." While Applicants acknowledge that the Advisers Act does not expressly exempt international organizations made up solely of sovereign nations, Applicants argue that

the Advisers Act seems clearly intended not to apply to such organizations.

5. Applicants acknowledge that a foreign individual or corporate investor would expect the protections of the United States securities laws to apply when doing business with an investment adviser resident in the United States. Applicants assert, however, that, given the particular nature of IBRD and IDA, their unique purposes, and the nature of their constituent members, recipients of the proposed investment advice would not reasonably expect the Advisers Act to apply.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44597; File No. SR-CBOE-2001-37]

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

July 26, 2001.

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 June 28, 2001, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") 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 July 20, 2001, the CBOE submitted 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 and Amendment No. 1 from interested persons.

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

The CBOE proposes to amend its fee schedule. The text of the proposed rule

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

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

<sup>3</sup> See letter to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, from Christopher Hill, Attorney II, CBOE, dated July 19, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE made technical corrections to the rule text.

change is available at the Office of the Secretary, CBOE and 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 CBOE included statements concerning the purpose of and basis for the proposed rule change, as amended, 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

The purpose of this proposed rule change is to make certain fee changes and deletions, and to renew and amend the Exchange's Prospective Fee Reduction Program. The proposal is the product of the Exchange's annual budget review. The fee changes were approved by the Exchange's Board of Directors pursuant to CBOE Rule 2.22. The CBOE proposes that the changes would be effective as of July 1, 2001.

The Exchange is amending the following fees. (1) Registration fees for Registered Representatives, Registered Options Principals, and Financial/Operations Principals will be increased from \$45 to \$55 for initial applications. Annual and transfer fees for these registered persons will be increased from \$40 to \$50. The Exchange proposes to amend CBOE Rule 2.22(b) to reflect the increase in these registration fees. (2) The ILX trading floor booth terminal rental fee will be increased from \$400 to \$425 per month, the ILX installation fee will be increased from \$150 to \$175 per month, the ILX removal fee will be increased from \$100 to \$125 per month, and the ILX relocation fee will be increased from \$200 to \$225 per month. (3) The various monthly booth fees will each be raised 10%. (4) The various membership application fees will each be raised 10%, except for the Fingerprint Processing fee, which will be raised 14% (from \$35 to \$40), and New Member Orientation Fee, which will remain unchanged at \$500. The Exchange proposes to amend its Membership Fee Circular to reflect these membership application fee changes.

The various amendments contained in this filing are structured to fairly

allocate the costs of operating the Exchange.

The Exchange proposes to renew and amend its Prospective Fee Reduction Program ("Program"). 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 market-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 2001 will be used to determine the discount applied in the first quarter of fiscal year 2002. The CBOE proposes that the Program begin on July 1, 2001 at the beginning of the Exchange's 2002 fiscal year, and continue through the end of the Exchange's 2002 fiscal year, terminating June 30, 2002.

The amendments to the Program 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 Program will terminate at the end of the Exchange's 2002 fiscal year, the Exchange intends to evaluate this Program prior to the beginning of the 2002 fiscal year and may renew this Program in the same or modified form for the 2003 fiscal year.<sup>4</sup>

#### 2. Statutory Basis

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

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

<sup>4</sup> The Commission notes and the Exchange acknowledges that it would be required to file a proposed rule change pursuant to Section 19(b) of the Act before renewing or modifying this program. Telephone conversation between Christopher Hill, Attorney II, CBOE, and Frank N. Genco, Attorney Advisor, Division, Commission on July 9, 2001.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

### 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

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)<sup>7</sup> of the Act and Rule 19b-4(f)(2)<sup>8</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, as amended, 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, as amended, 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, as amended, 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 No. SR-CBOE-2001-37 and should be submitted by August 23, 2001.

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

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

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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