

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48815; File No. SR-CBOE-2003-33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc., Relating to Non-Member Market Maker Transaction Fees

November 20, 2003.

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, 2003, 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 CBOE. On November 13, 2003, CBOE filed Amendment No. 1 by facsimile.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

CBOE proposes to change its Fee Schedule to increase transaction fees for orders originating from non-member market makers by \$.02 per contract. 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, 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. 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, Proposed Rule Change

1. Purpose

Currently, the Exchange charges transaction fees for orders executed on behalf of non-member market makers (*i.e.*, those designated with an "N" origin code) that are equal to member market maker and member firm rates in the equities and QQQ options (\$.19 per contract) and equal to customer rates in index products (\$.15 to \$.40). CBOE represents that Exchange members have complained that such equivalence of fees is unfair to Exchange members, who pay a variety of additional fees through their membership in the Exchange to help offset the Exchange's expenses. In order to more fairly assess Exchange costs among the individuals and organizations who avail themselves of the Exchange's trading opportunities, the Exchange proposes to increase transaction fees for N orders by \$.02 per contract.

In connection with the \$.02 increase, the Exchange notes two points. First, the Exchange notes that since it does not permit non-members to enter orders on the Exchange, the Exchange will not be directly assessing any such fees upon non-members. Second, the Exchange notes that the \$.02 increase will not apply to linkage orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities.

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 not necessary or appropriate in furtherance of purposes of the Act.

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 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, including whether the proposed rule change 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 Section. 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-2003-33 and should be submitted by December 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

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⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Christopher R. Hill, Assistant General Counsel, CBOE to Leah Mesfin, Attorney, Division of Market Regulation, Commission, dated November 13, 2003 ("Amendment No. 1"). In Amendment No. 1, CBOE modified its argument in support of the proposal.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 17 CFR 200.30-3(a)(12).