

**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. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-72 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2004-72 and should be submitted on or before February 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50964; File No. SR-CBOE-2004-82]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Rule 17.10(d)—Review of Decision Not to Initiate Charges

January 5, 2005.

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 December 8, 2004 the Chicago Board Options Exchange, Incorporated ("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. 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 amend Exchange Rule 17.10(d)—Review of Decision Not to Initiate Charges by transferring the authority to review the Exchange's Business Conduct Committee's ("BCC") decision to decline to authorize the issuance of a Statement of Charges from the President of the Exchange to the Regulatory Oversight Committee ("ROC") and by changing the time to assess such a review from 30 days to 45 days. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

<sup>15</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.

#### 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 those 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Exchange Rule 17.10(d) provides a "check and balance" process to ensure that in situations where the BCC declines to authorize the issuance of a Statement of Charges that is recommended by the Exchange staff, the President of the Exchange has an opportunity to review the BCC's decision and refer the matter to the Board of Directors.

The Exchange is seeking two specific modifications to this rule. First, the Exchange seeks to shift the review authority from the President of the Exchange to the Exchange's ROC. Given the ROC's oversight of regulation, the Exchange believes that it is appropriate to shift the reviewing authority from the President to the ROC. Additionally, the Exchange believes that this amendment will reduce the appearance of any conflict of interest. As a result, the Exchange believes that this transfer of reviewing authority from the President to the ROC further enhances the independence of CBOE's regulatory structure.

Second, the Exchange seeks to amend and clarify the time frame of review from 30 to 45 days, commencing from the date the Exchange serves the subject of the alleged violation with notice of a decision by the Business Conduct Committee pursuant to Exchange Rule 17.4(a) not to initiate the charges that have been recommended by Exchange staff. The Exchange believes that in transferring this review authority to the ROC, additional time may be needed to accommodate the busy schedules of the members of the ROC and to provide the members of the ROC with greater scheduling flexibility.

The Exchange believes that by transferring the reviewing authority from the President to the ROC and by

amending and clarifying the time to assess such a review, CBOE will further enhance the independence of its regulatory structure.

## 2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>4</sup> in particular, by promoting just and equitable principles of trade, and protecting investors and the public interest. The proposed rule change will promote just and equitable principles of trade and protect investors and the public interest by further enhancing the independence of the Exchange's disciplinary and regulatory process.

### 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 the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on 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 findings 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. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-82 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2004-82 and should be submitted on or before February 2, 2005.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50965; File No. SR-FICC-2004-06]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Institute Fines for Late Payment of Cash Obligations and Margin and To Institute Informal Hearing Procedures for Fine Disputes

January 5, 2005.

## I. Introduction

On March 18, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on April 16, 2004, amended proposed rule change SR-FICC-2004-06 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 November 15, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

## II. Description

The purpose of the proposed rule change is to institute at the MBSD (i) fines for the late payment of cash obligation items and margin deficits and (ii) informal procedures for disputed MBSD fines.

### 1. Fines for Late Payments

The MBSD has for some time imposed fees in order to promote greater compliance with its cash obligation and margin payment deadlines.<sup>3</sup> Fees differ from fines in that fines must be reported by FICC to the Commission. FICC believes that, consistent with the practice of the Government Securities Division ("GSD") of FICC, assessments for late payment of margin and cash obligation items should be categorized as fines. FICC believes that this change will provide a greater incentive for participant compliance with appropriate payment timeframes which will reduce risk to all MBSD participants.

### 2. Procedures Relating to Disputed Fines

The rules of the MBSD currently contain procedures whereby a participant can dispute any fine

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

<sup>2</sup> Securities Exchange Act Release No. 50642 (November 5, 2004), 69 FR 65662.

<sup>3</sup> Currently, the MBSD rules state that failure to pay a cash settlement obligation will result in the assessment of a fine. However, the MBSD Schedule of Charges refers to such charges as "fees," and they have been processed as fees by MBSD in the past.

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

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

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