

the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>15</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>16</sup> As required under Rule 19b-4(f)(6)(iii),<sup>17</sup> the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>18</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>19</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>20</sup> which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules to BOX's current practice and clarify that Directed Orders on BOX are not anonymous without interruption.<sup>21</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such 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. 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-BSE-2008-04 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2008-04. 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BSE. 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-BSE-2008-04 and should be submitted on or before February 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-1598 Filed 1-29-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57191; File No. SR-CBOE-2007-150]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Exchange Fees for Fiscal Year 2008

January 24, 2008.

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 20, 2007, 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 substantially prepared by the CBOE. On January 10, 2008, CBOE filed Amendment No. 1 to the proposed rule change. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule to make various changes for Fiscal Year 2008. The text of the proposed rule change is available at the CBOE, on the Exchange's Web site at <http://www.cboe.org/legal>, and in the Commission's Public Reference Room.

#### 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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>20</sup> *Id.*

<sup>21</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

<sup>21</sup> 17 CFR 240.19b-4.

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*

1. Purpose

The purpose of this proposed rule change is to amend the CBOE Fees Schedule to make various fee changes. The proposed changes are 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 and will take effect on January 1, 2008.

The Exchange proposes to amend the following fees:

Liquidity Provider Sliding Scale

In January 2007, the Exchange adopted a "Liquidity Provider Sliding Scale" program, which reduces a Liquidity Provider's per contract transaction fee based on the number of contracts the Liquidity Provider trades in a month.<sup>3</sup> The sliding scale applies to all Liquidity Providers (CBOE Market-Maker, DPM, e-DPM, LMM and RMM) for transactions in all products.<sup>4</sup>

Under the current program, a Liquidity Provider's \$.20 per contract transaction fee is reduced if the Liquidity Provider reaches the volume thresholds set forth in the sliding scale in a month. As a Liquidity Provider's monthly volume increases, its per contract transaction fee decreases. The first 50,000 contracts traded in a month (first tier) are assessed at \$.20 per contract. The next 950,000 contracts traded (up to 1 million total contracts traded—second tier) are assessed at \$.18 per contract. The next 1.5 million contracts traded (up to 2.5 million total contracts traded—third tier) are assessed at \$.15 per contract and the next 1.5 million contracts traded (up to 4 million total contracts traded—fourth tier) are assessed at \$.10 per contract. All contracts above 4 million contracts traded in a month (fifth tier) are assessed at \$.02 per contract. The Exchange aggregates the trading activity of separate Liquidity Provider firms for purposes of the sliding scale if there is at least 75% common ownership

between the firms as reflected on each firm's Form BD, Schedule A.<sup>5</sup>

The Exchange proposes to increase the sliding scale volume thresholds for fiscal year 2008 due to increased volume on the Exchange. Specifically, the Exchange proposes to increase the first tier threshold from 50,000 contracts to 75,000 contracts, the second tier threshold from 950,000 contracts to 1,125,000 contracts (up to 1.2 million total contracts traded), the third tier threshold from 1.5 million contracts to 1.8 million contracts (up to 3 million total contracts traded), the fourth tier threshold from 1.5 million contracts to 1.8 million contracts (up to 4.8 million total contracts traded), and the fifth tier threshold from above 4 million contracts to above 4.8 million contracts. The Exchange also proposes to increase the fifth tier transaction fee rate from \$.02 per contract to \$.03 per contract.

Under the current program, the Exchange provides Liquidity Providers with two incentives to prepay annual transaction fees. First, in order to be eligible to participate in the sliding scale above 1 million contracts (*i.e.*, at the \$.15 per contract rate and lower), a Liquidity Provider is required to prepay their transaction fees for the first two tiers of the sliding scale for the entire year (*i.e.*, \$2.172 million). Second, if a Liquidity Provider prepays annual fees for the first four tiers of the sliding scale, the Liquidity Provider receives a \$500,000 prepayment discount (total amount of the prepayment would be \$6.172 million instead of \$6.672 million). As a result of increasing the volume thresholds as described above, the \$2.172 million prepayment amount would be revised to \$2.61 million. The Exchange proposes to increase the discount for prepaying the first four tiers of the sliding scale from \$500,000 to \$600,000 (total amount of the prepayment would be \$7.41 million instead of \$8.01 million).

Member Firm Proprietary and Firm Facilitation Fee Cap

Pursuant to Section 20 of the CBOE Fees Schedule, the Exchange caps member firm proprietary fees at \$125,000 per month per firm ("Member Firm Fee Cap"). The Exchange proposes to eliminate the Member Firm Fee Cap program and replace it with a sliding scale program ("Member Firm

Proprietary Sliding Scale") similar in operation to the Liquidity Provider Sliding Scale.

The proposed Member Firm Proprietary Sliding Scale would reduce the standard member firm proprietary per contract transaction fee (currently \$.20 per contract) based on the number of contracts the member firm trades in a month, based on the following sliding scale:

Tiers	Contracts per month	Rate (cents)
First .....	First 200,000 .....	20
Second .....	Next 400,000 .....	15
Third .....	Next 150,000 .....	10
Fourth .....	Next 100,000 .....	5
Fifth .....	Above 850,000 .....	2

The sliding scale would apply to member firm proprietary orders ("F" origin code) in all products, except for orders of joint back-office ("JBO") participants.<sup>6</sup>

A member firm's \$.20 per contract transaction fee would be reduced if the member firm reaches the volume thresholds set forth in the sliding scale in a month. As a member firm's monthly volume increases, its per contract transaction fee would decrease. Under the proposed sliding scale, the first 400,000 contracts traded in a month would be assessed at \$.20 per contract. The next 200,000 contracts traded (up to 600,000 total contracts traded) would be assessed at \$.15 per contract. The next 150,000 contracts traded (up to 750,000 total contracts traded) would be assessed at \$.10 per contract and the next 100,000 contracts traded (up to 850,000 contracts traded) would be assessed at \$.05 per contract. All contracts above 850,000 contracts traded in a month would be assessed at \$.02 per contract.

Due to the Exchange's obligation to pay license fees on certain products, the Exchange would assess a \$.10 per contract license fee (a total of 10 cents per contract less any surcharge fees already assessed) on all licensed products when a firm reaches the fifth tier of the sliding scale.

Surcharge Fees

The Exchange currently charges a \$.04 per contract surcharge fee on transactions of all market participants in

<sup>3</sup> See Securities Exchange Act Release No. 55193 (January 30, 2007), 72 FR 5476 (February 6, 2007).

<sup>4</sup> Contract volume resulting from dividend, merger and short stock interest strategies as defined in Footnote 13 of the Fees Schedule does not apply towards reaching the sliding scale volume thresholds.

<sup>5</sup> A Liquidity Provider's monthly contract volume is determined at the firm affiliation level, *e.g.*, if five Liquidity Provider individuals are affiliated with member firm ABC as reflected by Exchange records for the entire month, all of the volume from those five individual Liquidity Providers count towards firm ABC's sliding scale transaction fees for that month.

<sup>6</sup> A JBO participant is a member or member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System. JBO participant orders are excluded from the sliding scale due to the fact that the Exchange is unable to differentiate orders of the JBO participant from orders of its JBO Broker and so is unable to aggregate the JBO participant's orders for purposes of the sliding scale.

options on the S&P 100 Index (OEX and XEO), S&P 500 Index (SPX) and options on volatility indexes (*e.g.*, VIX) excluding public customer orders and including linkage orders.<sup>7</sup> The Exchange proposes to increase the surcharge fee to \$.06 per contract in these products. The surcharge fee is assessed to help the Exchange recoup license fees the Exchange pays to index licensors for the right to list these products for trading.

#### SPX Customer Transaction Fee

The Exchange currently charges customers trading SPX options \$.44 per contract if the premium is greater than or equal to \$1 and \$.27 per contract if the premium is less than \$1. The Exchange proposes to increase the transaction fee rate if the premium is less than \$1 from \$.27 per contract to \$.35 per contract.

#### Membership Application Fees

Membership application fees are set forth in Section 11 of the CBOE Fees Schedule as well as in a regulatory circular ("Membership Fees Circular"). These fees have not changed in approximately four years. The Exchange proposes several changes to the membership application fees as reflected in the Fees Schedule and Membership Fees Circular included as Exhibit 5. The proposed changes would simplify the membership application fees schedule by consolidating certain fees. In addition, certain fees are proposed to be increased, certain fees are proposed to be eliminated, and one new fee is proposed to be established (Seat Transfer Fee).<sup>8</sup>

The Exchange notes that while the proposed \$4,000 Trading Firm Application Fee is significantly higher than the current firm application fee (\$275), unlike the current fee the proposed new fee will encompass several other fees related to a firm's membership application,<sup>9</sup> thereby potentially resulting in an overall fee reduction for some firm applicants. For example, under the current membership fee structure, a firm applicant would pay the \$275 firm application fee, the \$2,200 individual application fee for each of its nominees applying for individual membership, the \$275 fee for each of its associated persons (*e.g.*, general partners, executive officers, LLC

managers, etc.) and the \$40 fingerprint processing fee for each of its associated persons, which fees when totaled could potentially equal or exceed \$4,000.

#### Manual Appointment Change Request Fee

The Exchange provides members with access to an online appointment system that allows CBOE market-makers and remote market-makers to view and update their market-maker appointments as often as necessary. Market-makers are still allowed to request appointment changes via email, phone call or in-person visits to the Exchange. In order to encourage market-makers to use the online appointments system, the Exchange proposes to charge members \$50 for each appointment change request that is not executed through the online appointment system.

#### Technology Fee Changes

The Exchange proposes to amend an existing fee and establish several new fees related to CBOE's electronic trading system (CBOEdirect) and its Hybrid Trading System. First, the Exchange provides certain hardware (*e.g.*, servers) and related maintenance services to third party vendors that provide members with quoting software used by members to trade on the Hybrid Trading System. Since 2003, the Exchange has charged these members \$100 per month to help the Exchange recover its costs in facilitating the members' receipt of these third party services. Due to increased quoting, the Exchange's costs in upgrading and otherwise maintaining this hardware have increased. The Exchange proposes to increase the monthly fee from \$100 to \$150 to help the Exchange offset these increased costs.<sup>10</sup>

Second, the Exchange proposes to establish three new monthly charges related to connectivity to CBOEdirect. The Exchange provides member firms with server hardware that enable the firms to connect to CBOE's two Application Protocol Interfaces ("APIs"): CMI (CBOE Market Interface) and Financial Information Exchange ("FIX"). Currently, members do not pay for this service. The Exchange proposes to charge members a \$40 per month "CMI Application Server" fee for this service. In addition, the Exchange proposes to charge members a \$40 per month "network access port" charge and a \$40 per month "FIX port" charge for network hardware the Exchange

provides to members for access to the Exchange's network.

Lastly, the Exchange provides cabinet space in the CBOE data center for co-locating member firm network and quoting engine hardware, to help members meet their need for high performance processing and low latency. The Exchange proposes to charge a co-location fee of \$10 per "U" of shelf space (which is equal to 1.75 inches).

#### Customer Large Trade Discount Program

The Exchange proposes to amend the Customer Large Trade Discount program. The Customer Large Trade Discount program provides a discount in the form of a cap on the quantity of customer contracts that are assessed transaction fees for CBOE index, ETF and HOLDRs options.<sup>11</sup> Currently, customer transaction fees are charged only up to the first 7,500 contracts per order in SPX options, only up to the first 5,000 contracts per order in other index options, and only up to the first 3,000 contracts per order in ETF and HOLDRs options. The Exchange proposes to: (i) Increase the SPX options cap to 10,000 contracts; and (ii) increase the cap for options on volatility indexes to 7,500 contracts from 5,000 contracts.

#### Miscellaneous, Non-substantive Changes

The Exchange proposes two non-substantive clean-up changes to its Fees Schedule, as reflected in Exhibit 5. The Exchange proposes to delete a sentence from Footnote 7 of the Fees Schedule relating to a cabinet fee as the Exchange recently eliminated that fee.<sup>12</sup> The Exchange also proposes to delete a sentence in Footnote 17 of the Fees Schedule relating to a fee waiver that is due to expire on December 31, 2007.<sup>13</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>15</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

<sup>11</sup> See CBOE Fees Schedule, Section 18.

<sup>12</sup> See Securities Exchange Act Release No. 56937 (December 10, 2007), 72 FR 71465 (December 17, 2007).

<sup>13</sup> See Securities Exchange Act Release No. 56852 (November 28, 2007), 72 FR 68226 (December 4, 2007).

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>7</sup> See CBOE Fees Schedule, Footnote 14.

<sup>8</sup> The \$500 Seat Transfer Fee is capped at \$200 for a seat transfer request covering multiple seats. See Amendment No. 1.

<sup>9</sup> The Trading Firm Application Fee would encompass a firm's membership application, one Individual Application Fee (Nominee) associated with the firm's membership application and Associated Person Fees for all associated persons that are part of the firm's membership application.

<sup>10</sup> The fee is located in Section 17 of the Fees Schedule and is currently named "Actant Computing User Fee". The Exchange proposes to rename the fee "Quoting Infrastructure User Fee."

### *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 that is 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**

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) of the Act<sup>16</sup> and subparagraph (f)(2) of Rule 19b-4<sup>17</sup> thereunder. 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.<sup>18</sup>

### **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-2007-150 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-150. 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2007-150 and should be submitted on or before February 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57193; File No. SR-DTC-2007-17]

### **Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Fee Schedule**

January 24, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 31, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared

primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to revise DTC's fee schedule.

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

The purpose of the proposed rule change is to revise fees for certain services provided by DTC.

These changes include:<sup>3</sup>

- (1) Decreases to Settlement Services fees to realign fees with costs incurred in providing the services.
- (2) Increases in Securities Processing, Custody, and Asset Servicing fees to realign fees with costs scaled to reflect processing complexity.
- (3) Elimination of certain Participant Output Services fees.

In addition, DTC is implementing certain disincentive fees to discourage activities which increase industry inefficiencies. These disincentive fees include:

- (1) A disincentive fee related to underwritings of non-conforming structured securities (*i.e.*, issues with structural elements that prevent agents from making timely announcements on income distributions) as compensation for the additional costs to DTC in processing them. The effective date for this fee will be announced by DTC via Important Notice upon the Commission's approval of proposed rule change SR-DTC-2007-11.<sup>4</sup>

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>3</sup> The specific changes to DTC's fee schedule are attached as an exhibit to the filing.

<sup>4</sup> Notice of filing was published for comment on November 26, 2007. Securities Exchange Act Release No. 56795 (November 15, 2007), 72 FR 66009.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on January 10, 2008, the date CBOE filed Amendment No. 1.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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