

written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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. Copies of the 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-98-39 and should be submitted by November 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40572; File No. SR-CBOE-98-41]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Amend Its Minor Rule Violation Plan With Respect to Exercise of American-Style, Cash-Settled Index Options

October 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 23, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. 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 amend its minor rule violation plan<sup>3</sup> to include a schedule of summary fines for late exercise of cash-settled index options pursuant to CBOE Rule 11.1, Interpretation .03. 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. 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

CBOE proposes to amend the summary fine rule to add a schedule of fines for CBOE members who violate provisions of Exchange Rule 11.1 governing the exercise of American-style, cash-settled index options. Currently, CBOE trades one American-style, cash-settled index option contract, Standard & Poor's 100 Index options ("OEX"). Examples of violations that would be subject to the summary fine are the failure to submit an exercise advice; the submission of advice and no subsequent exercise; the submission of an exercise advice after the designated cut-off time; the submission of an exercise advice for an amount different than the amount exercised; and the time-stamping of an advice or exercise instruction memorandum prior to purchasing contracts. Violations occurring on a single trade date will generally be treated as one occurrence.<sup>4</sup>

<sup>3</sup> Rule 19d-1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. See Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order amending Rule 19d-1 under the Act).

<sup>4</sup> For example, of on any given day an individual member submits an exercise advice late to the Exchange and on the same day subsequently exercises a larger number of contracts than noted

There are three reasons why the Exchange determined to propose this schedule of summary fines. First, the Exchange believes most violations are inadvertent. Second, processing routine violations under the summary fine program would significantly decrease the administrative burden of regulatory and enforcement staff as well as that of the BCC.<sup>5</sup> Third, the membership of the Exchange would be more cognizant of the severity of penalties imposed and staff would be better able to expeditiously process routine violations under the summary fine program. The Exchange believes that the escalating schedule will deter members from considering fines for these violations as "the cost of doing business."

The summary fine schedule for Exchange Rule 11.1 violations, to be imposed on a rolling year look back period, is proposed to be as follows:

- *Violations No. 1 and 2*—Letter of Caution. However, if the violation involves 5 contracts or less and no unusual circumstances are noted, a Letter of Information will be issued. Letters of Information will not be counted for escalation purposes and a member cannot receive more than two Letters of Information during the rolling year look back period.
- *Violation 3*—Summary Fine of \$1,000 plus \$10 per contract.\*
- *Violation 4*—Summary Fine of \$2,000 plus \$10 per contract.\*
- *Violation 5*—Summary Fine of \$4,000 plus \$10 per contract.\*
- *Violation 6 and Subsequent*—Referral to the BCC.

on the advice, both of these rule infractions (late advice submission and contract discrepancy) would be treated under the summary fine program as one violation. On the other hand, if two different market maker nominees of the same member firm each separately submit late exercise advices, such independent actions would be treated as two separate rule violations, even though they occurred on the same day. Where a matter is referred to the Business Conduct Committee ("BCC") for action, instead of being handled under the summary fine program, the BCC would not be precluded from handling similar fact patterns differently. Telephone conversation between May Bender, Senior Vice President, Regulation, CBOE, and Robert Long, Attorney, Division of Market Regulation, Commission, on September 24, 1998.

<sup>5</sup> From January 1996 through May 1998, approximately 111 investigative reports were reviewed at the Pre-BCC level and resulted in the issuance of Letters of Caution. A total of 15 Statement of Charges were authorized and/or settled by the BCC during the same time period. Five of these violations could have been resolved via the proposed summary fine program. The remaining violations either involved significant fines or the dissemination of news. Under the proposed program, investigative reports will not be prepared describing violative conduct and presented to the BCC and/or Pre-BCC. Rather, upon receipt and review of all necessary documentation, the Letter of Caution or Summary Fine Disciplinary Notice will be immediately issued to the member.

<sup>6</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.

\* Fines in excess of \$5,000 will be deferred to the BCC.<sup>6</sup>

Some violations of CBOE Rule 11.1 with respect to American-style, cash-settled index options will not be resolved by summary fine. For example, violations that occur following the dissemination of significant news will not be resolved by way of summary fine. Additionally, violations where mitigating or aggravating circumstances are evident and it appears that a summary fine is inappropriate will be forwarded to the BCC.

## 2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> in that it is designed to refine and enhance the Exchange's minor rule violation plan, thereby removing impediments to a free and open market and protecting investors and the public interest.

### *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 that is not necessary or appropriate in furtherance of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>6</sup> Any fine imposed in excess of \$2,500 will be subject to reporting on SEC Form BD in addition to the immediate, rather than periodic, reporting requirement of Section 19(d)(1) of the Act. Compare Exchange Act Release No. 30280 (January 22, 1992), 57 FR 3452 (noting that fines in excess of \$2,500, assessed under New York Stock Exchange, Inc. Rule 476A, are not considered pursuant to the NYSE's minor rule violation plan and are thus subject to the current reporting requirements of Section 19(d)(1) of the Act).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

## 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. 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-98-41 and should be submitted by November 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40590; File No. SR-PCX-98-49]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Specialist Post Fee Waiver Program Amendments**

October 22, 1998.

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 September 24, 1998, as amended on October 13, 1998,<sup>3</sup> the Pacific Exchange,

<sup>8</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.

<sup>3</sup> See Letter from Michael Pierson, Senior Attorney, PCX, to Joshua Kans, Attorney, Division of Market Regulation, Commission, dated October 13, 1998 ("Amendment No. 1"). Amendment No. 1 eliminated a proposal to permit the Exchange's Executive Committee to determine whether to allow otherwise eligible specialists to participate in the Specialist Post Fee Waiver Program. Amendment

Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 is proposing to modify its Specialist Post Fee Waiver Program ("Program") by adding a requirement that any participating firm must remain in the Program for a minimum of six months or forego the benefits it has received during its participation in the Program.

### **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.

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

##### (1) Purpose

On February 19, 1998, the Exchange's Specialist Post Fee Waiver Program became effective upon filing.<sup>4</sup> The Program is intended to provide financial incentives and short-term cost relief for specialist firms that are approved by the Exchange to operate specialist posts that will no longer be operated by another firm. Under the Program, if a specialist firm is approved to assume financial and operational responsibility for a specialist post, the specialist firm's fixed specialist fees are waived for three months. The Program also allows participating specialist firms to earn fee credits, based on monthly trading

No. 1 also clarified the scope of the rule change's future effect, and clarified the Exchange's justification for the rule change's immediate effectiveness.

<sup>4</sup> See Exchange Act Release No. 39745 (March 12, 1998), 63 FR 13440 (March 19, 1998) (notice of filing and immediate effectiveness of SR-PCX-98-11).