

Office of Personnel Management. Under 5 CFR 736.104(b), requests for these investigative records "are to be submitted to the Office of Personnel Management, Federal Investigations Processing Center, FOI/PA, Boyers, Pennsylvania 16018."

In addition, the Commission is proposing to establish a new system of records, entitled "Child Care Subsidy Program (SEC-41)." This system will contain personal information submitted by lower income employees who apply for child care tuition subsidy. This information will be considered in determining eligibility for and the amount of the subsidy. This data will come from application forms and supporting records submitted by employees.

The Commission has submitted a report of the new system of records to the U.S. House of Representatives, the Senate, and the Office of Management and Budget, under 5 U.S.C. 552a(r) and Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," as amended on February 20, 1996 (61 FR 6435).

Accordingly, the Commission is adding a new system of records to read as follows.

SEC-41

SYSTEM NAME:

Child Care Subsidy Program.

SYSTEM LOCATION:

SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former SEC employees and their children and child care providers.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Employee's name, telephone numbers, address, grade, gross annual salary, gross family income that was reported on the latest Federal income tax return, and number of dependent children; (2) employee's child's name, date of birth, social security number, weekly tuition cost, amount of child care tuition subsidy from state or local government; and (3) employee's child care provider's name, address,

current employees, former employees, or on contractor employees. These copies may be located in the personnel security office or other designated offices responsible for suitability, security clearance, access, or hiring determination on an individual. ("Agency" as used throughout this system is deemed to include Legislative and Judicial branch establishments as well as those in the Executive Branch).

telephone number, tax identification number, and license number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 643, Pub. L. 106-58, 113 Stat. 477.

PURPOSE:

To determine eligibility for, and the amount of, the child care tuition subsidy for lower income SEC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to the conditions of disclosure under 5 U.S.C. 552a(b), the SEC staff may provide these records to:

(1) Any Federal, state, or local government authority implementing child care subsidy programs or investigating a violation or potential violation of a statute, rule, regulation, or order;

(2) Any contractor that performs, on the SEC's behalf, services requiring the use of these records; and

(3) The Office of Personnel Management to be used for evaluating the child care subsidy program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic format.

RETRIEVABILITY:

These records are retrievable by the employee's name or social security number.

SAFEGUARDS:

When not in use, paper records are kept in locked rooms or metal cabinets in a building with security cameras and 24-hour security guards. Access to computer records requires the use of restricted passwords.

RETENTION AND DISPOSAL:

These records will be maintained permanently until their official retention period is established.

SYSTEM MANAGER AND ADDRESS:

Associate Executive Director, Office of Administrative and Personnel Management, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

NOTIFICATION PROCEDURES:

Requests to determine whether this system contains a record pertaining to the requesting individual should be sent to the Privacy Act Officer, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

RECORD ACCESS PROCEDURES:

Individuals who want to know how to gain access to or contest the contents of their records may contact the Privacy Act Officer, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Applications for child care subsidy and supporting records, which are voluntarily submitted by employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By the Commission.

Dated: July 28, 2000.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43113; File No. SR-CBOE-00-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to the Adoption of the CBOE Best Executive Assurance Program

Pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 2, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or the "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 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

The CBOE proposes to adopt the "CBOE Best Executive Assurance Program SM" ("BestExSM"), which consists of existing Exchange rules and procedures, and to file the same as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of those rules and procedures.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19-4.

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, the 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 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

Currently, the obligation of broker-dealers to provide best execution of their customers' orders is receiving increasing attention in the options markets. In part this is due to the fact that a greater number of options are traded in multiple markets than has been the case historically, which means that brokers now have greater choices concerning where to direct their customers' orders from execution. It is also due to a practice known as payment for order flow, whereby specialists or market makers offer to pay a specified amount to brokers for directing orders to them. This practice, which was introduced a number of years ago in the over-the-counter stock market and on certain regional stock exchanges, has now begun to appear in options markets, most recently including the CBOE.³ the availability of payment for order flow has made it more important for firms to be able to demonstrate that they have given first priority to the obligation to provide best execution of their customers' orders, and have not permitted this obligation to be compromised by the firms' self-interest in obtaining such payment.⁴

In order to make its members aware of how the CBOE's systems, procedures

and rules help them satisfy their best execution obligations when they direct orders to the CBOE for execution, the CBOE has recently announced its intention to introduce the BestEx program.⁵ The BestEx program is based on existing rules of the CBOE that govern the operation of its auction market, including its Retail Automatic Execution System ("RAES"), and on Exchange systems such as the Order Routing System ("ORS") and Public Automated Routing ("PAR") workstations and on certain recent enhancements to those systems.

The BestEx program applies to customer orders received through ORS. The first step in processing these orders to assure that executions take place at the best available price is to direct all orders received over ORS that appear to be RAES-eligible to RAES for execution in accordance with Exchange Rule 6.8. Interpretation and Policy .02 under that Rule provides that no orders may be executed on RAES at a price that is inferior to the national best bid or offer ("NBBO") as identified in RAES. Instead, these orders are either executed automatically in RAES at the NBBO, or, if the NBBO is better than the RAES price by more than an established "step-up amount," the orders are rerouted to PAR. Customer orders received over ORS that do not appear to be RAES-eligible go directly to PAR.

Recent enhancements to PAR provide enhanced access to NBBO pricing information at the workstation. This places the floor broker in a position to know that an execution on CBOE will be at a price that is at least as good as the NBBO, unless there are valid reasons for believing that what appears to be a better price in another market is not obtainable or is otherwise not desired. Finally, in the event that an ORS order is executed on the CBOE at a price inferior to the NBBO, an advisory to that effect will automatically be sent to designated regulatory staff on the Exchange Floor, who will assist the members involved in the trade in deciding whether a price adjustment is called for under the circumstances.

As part of the BestEx Program, the Exchange will distribute daily and monthly reports to each member firm that identify orders that may have been executed outside of the NBBO, show what if any action was taken to adjust the price, and provide statistical data to enable firms to do their own analysis of the extent to which orders directed to the CBOE receive best execution. The

combination of these systems, rules and procedures are designed to place members of the CBOE in a better position to know what is the NBBO at any time, and to give them greater assurance that the orders they direct to the CBOE over ORS will receive best execution. The CBOE recognizes that the current competitive environment has placed greater emphasis on the best execution obligations of its members. It is the CBOE's hope that, once members are able to employ the data from the BestEx program to demonstrate that they have satisfied their duty of best execution of customer orders, they will choose to direct more of their orders to the CBOE.

The Exchange represents that the BestEx program is designed to provide member firms with greater assurance that they have acted in a manner consistent with the fulfillment of their duty of best execution when they direct their customers' orders to the Exchange for execution. Accordingly, the Exchange believes that the proposed rule change is consistent with, and in furtherance of the objectives of, the Act, including specifically Section 6(b)(5)⁶ thereof, which requires the rules of exchanges to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition that is 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

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 CBOE has properly designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective upon filing pursuant to section 19(b)(3)(A)(i) of the Act⁷ and

³ The CBOE recently implemented a marketing fee that allows funds to be made available to DMPs for their use in paying for order flow. See Securities Exchange Act Release No. 43112 (August 3, 2000), File No. SR-CBOE-00-28.

⁴ In connection with the Exchange's implementation of the marketing fee to be used to attract order flow to the Exchange, the CBOE recently issued Regulatory Circular RC00-109, which describes regulatory issues raised by payment for order flow. Among other things, the Regulatory Circular emphasizes the obligation of member firms to provide best execution of their customers' orders without regard to considerations of payment for order flows.

⁵ The BestEx Program is described in Exhibit A to the proposed rule change, which is available at the places specified in item IV below.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

Rule 19b-4(f)(1) thereunder.⁸ At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate the 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

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing. 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 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-00-32 and should be submitted by August 31, 2000.

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. 34-43112; File No. SR-CBOE-00-28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to the Adoption of a New Marketing Fee

August 3, 2000.

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 10,

2000, the Chicago Board Options Exchange, Inc. ("CBOE" or the "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 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

The CBOE proposes to adopt a new marketing fee to be imposed on transactions of market makers (including Designated Primary Market Makers, or "DPMs"), other than market-maker-to-market-maker transactions. The fee will be effective as of July 1, 2000, and will be imposed at the rate of \$.40 per contract on all classes of equity options.

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, the 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 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

The purpose of the proposed new marketing fee is to provide a source of revenue to the Exchange to be used for marketing purposes in light of changing competitive circumstances that have arisen, and may continue to arise, in particular classes of multiply traded equity options. These circumstances include the growing practice by some specialists on options exchanges of paying brokers for orders in multiply traded classes directed to these specialists. In light of this development and in order to be competitive in multiply traded options, the CBOE has determined to impose a new marketing fee on market makers' transactions (other than transactions between market makers) in designated classes of equity options.

All of the funds generated by the new fee will be segregated according to the station where the classes of options subject to the fee are traded, and will be made available to the DPM at the station where the funds were collected. These funds in turn will be used by the DPM to attract orders in the classes of options traded at that station. This use of funds could include payments made by the DPMs to broker-dealers for the orders they direct to the Exchange. The specific terms governing the orders that qualify for payment and the amount of any payment to be made will be determined by the DPMs in whatever manner they believe is most likely to be effective in attracting order flow to the Exchange in options traded at the DPMs' assigned stations.

The DPMs will be obligated to account to the Exchange for the use they make of funds made available to them by the Exchange for this purpose, but all determinations concerning the amount the DPMs may pay for orders and the types and sizes of orders that qualify for payment will be made exclusively by the DPMs, and not by the Exchange. The Exchange may provide administrative support to the DPMs in such matters as keeping track of the number of qualified orders each firm directs the Exchange, and making the necessary debits and credits to the accounts of the DPMs and the firms to reflect the payments that are to be made.

The new marketing fee will apply to all transactions of market makers (including DPMs), except for transactions solely between market makers. According to the CBOE, market-maker-to-market-maker trades will not be part of the program so as to avoid imposing added costs on what, for the most part, are hedging or rebalancing transactions of market makers entered into in support of their affirmative market maker obligations. Moreover, market-maker-to-market-maker transactions are not the kind of transaction that the marketing program is designed to attract in the first place. As an administrative matter, the marketing fee initially will be collected on all transactions of market makers, and will then be refunded to the extent it was collected on market-maker-to-market-maker trades. The CBOE represents that any changes to the classes of options to which the marketing fee applies, to the rate or rates which the fee is assessed, or to the disposition by the Exchange of funds generated by the fee will be the subject of separate filings with the Commission

⁸ 17 CFR 240.19b-4(f)(1).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.