

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 Exchange 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, as amended, 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 Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-00-60 and should be submitted by August 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44629; File No. SR-CBOE-2001-36]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Amendment No. 1 To Exempt Certain Spread Transactions From the Marketing Fee and To Amend the Definition of Deep-in-the-Money Options To Include a Spread Traded at Maximum Value

July 31, 2001.

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 June 21, 2001, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items the CBOE has prepared. The CBOE filed Amendment No. 1 to the proposed rule change on July 18, 2001.³ The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

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

The CBOE proposes to exempt certain spread transactions from its marketing fee. The text of the proposed rule change is available at the 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

³ See letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 17, 2001. The CBOE originally submitted the filing pursuant to Section 19(b)(3)(A) of the Act. The CBOE has submitted the amended filing pursuant to Section 19(b)(2) of the Act.

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

1. Purpose

In August 2000, the CBOE imposed a \$0.40 per contract marketing fee to collect funds to be used by the appropriate Designated Primary Market Maker ("DPM") to attract order flow to the CBOE.⁴ Initially, this fee was applicable to all market-maker-to-market-maker options transactions. Thereafter, the CBOE determined that the imposition of the marketing fee made it unprofitable for market makers to do banking-type transactions (*i.e.*, reversals and conversions) on the CBOE. Therefore, the CBOE waived the fee for call/put combination transactions used in reversals and conversions.⁵

In May 2001, the CBOE waived imposition of the marketing fee for spread transactions involving a total of at least 400 contracts of "deep in the money" options, as well as "buy write" and "synthetic" transactions involving at least 200 contracts of "deep in the money" options bought or sold in a 1-to-1 ratio versus stock.⁶ The terms of that filing provided that the waivers contained therein were to become effective on May 1, 2001. The CBOE now proposes to change the effective date of the waivers described in SR-CBOE-2001-18 from May 1, 2001 to July 1, 2001. The effect of this change would be to impose retroactively the marketing fee on the transactions described in SR-CBOE-2001-18 for the months of May and June.⁷ These transactions would become exempt from the marketing fee as of July 1, 2001.

Furthermore, the CBOE proposes to exempt from the marketing fee "deep in the money" put versus stock spread orders of 200 or more contracts. In the CBOE's view, these transactions, like reversals, conversions, and spread transactions, contribute to market liquidity but they too must be done at a smaller profit margin than other types of trades. The CBOE believes that

⁴ See Securities Exchange Act Release No. 43112 (August 3, 2000), 65 FR 490040 (August 10, 2000) (approving SR-CBOE-2000-28).

⁵ See Securities Exchange Act Release No. 4495 (March 23, 2001), 66 FR 17459 (March 30, 2001) (approving SR-CBOE-2001-09).

⁶ See Securities Exchange Act Release No. 44355 (May 25, 2001), 66 FR 30251 (June 5, 2001).

⁷ While this filing retroactively imposes the marketing fee upon the transactions described in SR-CBOE-2001-18, the CBOE notes that it previously collected these fees for the transactions that occurred during May and June 2001. With respect to the transactions described in SR-2001-18, the CBOE states that it will not be necessary to collect any additional monies for the months of May and June 2001.

²¹ 17 CFR 200.30-3(a)(12).

imposition of the marketing fee makes these transactions unprofitable to execute on an exchange. The CBOE also proposes that the effective date of these exemptions be July 1, 2001.

Finally, the CBOE proposes to amend the definition of "deep in the money" options to include "spreads traded at maximum value," which are spreads that trade at a price equal to or greater than the difference between the two strike prices of the affected option series. Currently, the CBOE defines "deep in the money" options as those options that are in the money by a minimum of both \$10 and 20% of the closing value of the underlying security on either the trade date or the date immediately prior to the trade date. According to the CBOE, if the options series involved in the spread have strike prices that are less than \$10 apart, it would be impossible for these positions to be considered "deep in the money" under the current definition. Nevertheless, because these positions do trade at maximum value, the CBOE believes that it is appropriate that they be classified as "deep in the money."

For purposes of uniformity, the CBOE proposes that all of the fee waivers contained in the footnote 10 of its Fee Schedule would become effective July 1, 2001. Therefore, effective July 1, 2001, the CBOE proposes to waive the 40-cent marketing fee for the following options transactions: (a) Spread transactions involving a total of at least 400 contracts of "deep in the money" options; (b) "buy write" and "synthetic" transactions involving at least 200 contracts of "deep in the money" options bought or sold in a 1-to-1 ratio versus stock; and (c) "deep in the money" put versus stock spread orders of 200 or more contracts.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4)⁹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

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

The CBOE neither solicited nor received written comments 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 CBOE 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, as amended, 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 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 the File No. SR-CBOE-2001-36 and should be submitted by August 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44636; File No. SR-CHX-2001-18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Correct Text to CHX Article XX, Rule 10, Interpretations and Policies .02

August 1, 2001.

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 27, 2001, the Chicago Stock Exchange, Incorporated ("CHX" 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 Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(b)(6)⁴ thereunder, which renders the proposal effective upon filing with the Commission.⁵ 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 Proposal

The Exchange proposes to correct rule text that was used as the basis for marking the changes to the CHX's clearing the post rule. Those changes were approved in File No. SR-CHX-2001-09.⁶ The CHX does not propose any substantive changes at this time; the only proposed changes are to correct inaccurate rule text that was inadvertently used in SR-CHX-2001-09. The text of the proposed rule change is available at the Commission and at the CHX.

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 CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange provided the Commission with written notice of its intent to file the proposal on July 19, 2001, pursuant to Rule 19b-4(f)(6). 17 CFR 240.19b-4(f)(6).

⁶ Securities Exchange Act Release No. 44454 (June 20, 2001), 66 FR 33730 (June 25, 2001).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 17 CFR 200.30-3(a)(12).