

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 Exchange. All submissions should refer to File No. SR-CBOE-2001-68 and should be submitted by January 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45231; File No. SR-CBOE-2001-73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated to Delete a Previously Proposed Fee for Excessive RFQs on Its New Screen-Based Trading System

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice hereby is given that on December 27, 2001, 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

CBOE proposes to modify the fee schedule for the Exchange's new screen-based trading platform by deleting a previously proposed fee for excessive requests for quote ("RFQs"). The text of the proposed rule change is available at the principal office of the Exchange and at 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 regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

1. Purpose

CBOE proposes to delete a previously proposed fee for excessive RFQs applicable to the Exchange's new screen-based trading system, CBOE*direct*.

CBOE*direct* is CBOE's new options trading engine. A component of trading on CBOE*direct* is the RFQ process (although CBOE market-makers may be required to provide continuous two-sided markets in products traded on the system). RFQs generally provide a mechanism for gauging the marketing in a particular option series in connection with effecting a trade in such series. Because the RFQ process is not meant to serve exclusively as an unlimited price discovery mechanism, CBOE intends to adopt an excessive RFQ fee to help protect the CBOE*direct* system.

CBOE originally submitted an excessive RFQ fee in SR-CBOE-2001-57.³ CBOE now seeks to delete that excess RFQ fee from its fee schedule in order to reevaluate how it intends to structure the fee. CBOE has represented that it expects to submit a new fee that will assist in addressing the costs associated with excessive RFQs in the near future.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of the Act⁴ in general and section 6(b)(4)⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

³ See Securities Exchange Act Release No. 45075 (November 19, 2001), 66 FR 59038 (November 26, 2001).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

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

CBOE does not believe that the proposed rule change would impose any burden on competition 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

CBOE represents that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A) of the Act⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁷ 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. 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 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-2001-73 and should be submitted by January 31, 2002.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45226; File No. SR-CBOE-2001-69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trade Information Submitted to the Exchange

January 3, 2002.

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 December 21, 2001, the Chicago Board of Options Exchange, Inc. ("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 Exchange filed Amendment No. 1 to the proposed rule change on December 26, 2001.³ The Exchange filed Amendment No. 2 to the proposed rule change on January 2, 2002.⁴ 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 the provisions of Interpretation and Policies

.02 of CBOE Rule 6.51 to provide that members include the required trade information on orders that they submit to the Exchange. The text of the proposed rule change appears below. New text is in *italics*; deletions are in brackets.

Chapter VI—Doing business on the Exchange Floor

Section C: Trading Practices and Procedures

* * * * *

Reporting Duties

- RULE 6.51.(a) No change.
- (b) No change.
- (c) No change.
- (d) No change.

Interpretations and Policies

.01 No change.

.02 *When entering orders on the Exchange, each Member shall submit trade information in such form as may be prescribed by the Exchange in order to allow the Exchange to properly prioritize and route orders pursuant to the rules of the Exchange and report resulting transactions to the Clearing Corporation.* [For purposes of Rule 6.51(d), trade information shall include the proper account origin codes, which are as follows: "c" for a customer account, "f" for a firm proprietary account, "m" for a member market-maker account, "j" for a non-member joint venture participant transaction in Exchange options contracts, "y" for any options account of a stock specialist relating to his assignment as specialist on the primary market for the underlying stock, "b" for a customer range account of a broker-dealer, and "n" for any account of a non-member market-maker or specialist relating to his assignment in a class of options listed for trading both at this Exchange and at the exchange of the market-maker or specialist.]

.03 No change.

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

The Exchange states that the proposed rule change mimics the International Securities Exchange LLC ("ISE") Rule 712⁵ and amends Interpretations and Policies .02 of CBOE Rule 6.51 ("CBOE Rule 6.51.02") to mandate that each Member must submit trade information in such form as may be prescribed by the Exchange in order to allow the Exchange to properly prioritize and route orders pursuant to the rules of the Exchange and report resulting transactions to the Options Clearing Corporation ("OCC").⁶ CBOE Rule 6.51(d) requires members to file with the Exchange trade information in such form as may be prescribed by the Exchange. CBOE Rule 6.51.02 states that "trade information" for purposes of Rule 6.51(d) shall include account origin codes. The purpose of this marking requirement is primarily twofold. First, origin codes ensure that orders route to the proper location (*e.g.*, PAR, RAES, Booth) and they provide the Exchange with a mechanism by which to surveil whether members are in fact marking orders correctly. Second, the marking requirement assists the OCC in the clearance of trades.

The Exchange currently lists seven origin codes in CBOE Rule 6.51.02,⁷ and it has the systems capacity to accommodate 26 origin codes (one for each letter of the alphabet). Because the Exchange's origin codes are specifically listed in its rules, each time the Exchange determines to add, delete, or change an origin code, it must submit a rule filing to the Commission. This could require the submission of 19 separate rule filings if the Exchange were to add 19 new origin codes at different times.⁸

⁵ Securities Exchange Act Release No. 43795 (January 3, 2001), 66 FR 2468 (January 11, 2001).

⁶ Currently, Interpretations .02 states that trade information submitted under CBOE Rule 6.51(d) includes certain specific origin codes.

⁷ The Exchange currently uses the following origin codes: "c" for a customer account, "f" for a firm proprietary account, "m" for a member market-maker account, "j" for a non-member joint venture participant transaction in Exchange options contracts, "y" for any options account of a stock specialist relating to his assignments as specialist on the primary market for the underlying stock, "b" for a customer range account of a broker-dealer, and "n" for any account of a non-member market-maker or specialist relating to his assignment in a class of options listed for trading both at this Exchange and at the exchange of the market-maker or specialist. See CBOE Rule 6.51.02.

⁸ Over the next several months, the Exchange anticipates listing several new origin codes to

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⁸ 17 CFR 200.20-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Madge M. Hamilton, Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 21, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE made certain technical amendments to the proposal, amended the purpose section of the proposal and provided an enhanced statutory basis for the proposal. In addition, the CBOE requested that the Commission waive the 30-day period under which the proposal would become operative under Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁴ See letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated December 28, 2001 ("Amendment No. 2"). In Amendment No. 2, the CBOE again amended the purpose section of the proposal, enhanced the statutory basis of the proposal and reiterated its request that the Commission waive the 30-day period under which the proposal would become operative under Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).