

interruption. For the reasons discussed above and in prior orders concerning the Pilot Program,³⁵ the Commission believes that reducing the number of as-of-adds submitted to the Exchange may benefit investors by reducing the Exchange's processing costs, making the CBOE more efficient in terms of the time involved in trade processing, and reducing risk exposure to investors and Exchange member firms. Additionally, the Exchange has represented that no problems have arisen and no formal complaints have been received by the Exchange concerning the Pilot Program since its implementation.³⁶

Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve, on an accelerated basis, that portion of the proposed rule change requesting permanent approval of the Pilot Program.

For the reasons discussed above, the Commission also believes that it is appropriate to accelerate approval of the proposal to impose caps on the monthly as-of-add fees assessed against members. The Commission believes that this portion of the proposal addresses a significant concern that the Commission previously raised regarding the Pilot Program by ensuring that members are not assessed fees that are inordinately high, or punitive.³⁷ The Commission continues to believe that it is inappropriate for the CBOE to promote and enforce compliance with Exchange rules solely through the assessment of fees. Further, this proposal is a limitation on the existing Pilot Program, which has no upper limit on the monthly fee that can be assessed. As a result, because the Commission has not received comment on the existing Pilot Program, the Commission believes it is appropriate to approve this aspect of the proposal on an accelerated basis.

With regard to proposed paragraph (d) to Rule 2.26, the Commission believes that this amendment will promote uniformity between Rule 2.26 and existing Rule 2.30. The logic for waiving application of Rule 2.30 in the existence of unusual circumstances also applies to Rule 2.26, *i.e.*, if circumstances prevent a significant number of members from processing trade information, it generally may be inappropriate to assess fees against those members for violating Rules 2.26 and 2.30. Accordingly, the Commission believes it is appropriate to approve this portion of the proposal on an accelerated basis in order to promote uniformity between the Exchange's

rules and thus minimize potential confusion, and to avoid inconsistent results where for the same set of "unusual circumstances," the Exchange is able to waive application of Rule 2.30 but not Rule 2.26.³⁸

At this time the Commission is not approving that portion of the proposed rule change that would incorporate the Pilot Program into the Minor Rule Plan. Although the Commission believes that this portion of the proposal addresses suggestions previously noted by the Commission concerning the Pilot Program, the Commission believes that prior to approval, Exchange members should be given adequate notice of, and an opportunity to comment on, proposals that could subject them to disciplinary sanctions. As a result, the Commission expects the Exchange to distribute to its members notice of the rule change as approved herein and notice of the proposal to incorporate the Pilot Program into the Minor Rule Plan.³⁹ Moreover, the Exchange's request for accelerated approval of the proposal was for the sole purpose of avoiding procedural and accounting problems that would result from a lapse in the Pilot Program.⁴⁰ The Commission believes this concern has been adequately addressed by accelerating permanent approval of the Pilot Program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing proposed rule change and Amendment No. 1 thereto. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 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-94-50 and should be submitted by January 31, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁴¹ that the following portions of the proposed rule change (SR-CBOE-94-50), are approved: (1) The amendments to CBOE Rule 2.26 placing a ceiling on the monthly as-of-add fees that can be assessed against individual members and clearing members, and allowing the Exchange to suspend the rule in exigent circumstances; and (2) permanent approval of the Pilot Program.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴²

Margaret H. McFarland,
Deputy Secretary.

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Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Market Maker Appointments

January 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 14, 1994, the Chicago Board 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 self-regulatory organization. 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 amend CBOE Rule 8.3(c) concerning the number of trading stations at which a single market maker's appointed classes of options are traded.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

³⁵ See *supra* note 5.

³⁶ See Pilot Report, *supra* note 10.

³⁷ See *supra* note 5.

³⁸ See *supra* note 34 and accompanying text.

³⁹ See *supra* note 16.

⁴⁰ See Amendment No. 1, *supra* note 3.

⁴¹ 15 U.S.C. 78s(b)(2) (1988).

⁴² 17 CFR 200.30-3(a)(12) (1993).

¹ 15 U.S.C. 78s(b)(1).