

("Amex").⁷ The CBOE and PHLX proposals were subject to the full notice and comment period and the Commission received no comments on those proposals. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the Exchanges' proposals on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited 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. 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 Section, 450 Fifth Street, NW., Washington, DC. Copies of each filing will also be available for inspection and copying at the principal office of the respective above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1995.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule changes (File Nos. SR-NYSE-94-48 and SR-PSE-94-37) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35297; File No. SR-CBOE-94-50]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to As-of-Add Submissions

January 30, 1995.

On December 1, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the fees assessed by the Exchange against members pursuant to Exchange Rule 2.26 for submitting trade information under Exchange Rule 6.51³ after the trade date (each an "as-of-add"). Notice of the proposal and the Commission's order granting partial accelerated approval of the proposal appeared in the **Federal Register** on January 12, 1995.⁴ No comment letters were received on the proposed rule change. This order approves the remaining portion of the CBOE proposal.

The purpose of the proposed rule change was to amend the as-of-add fee pilot program in three ways and to have the pilot program, as amended, made permanent. The Commission has already approved those portions of the proposal: (1) Permanently approving the as-of-add fee pilot program; (2) placing a ceiling on the monthly as-of-add fee that can be assessed against individual and clearing members pursuant to CBOE Rule 2.26; and (3) amending Rule 2.26 to authorize the Exchange to suspend rule 2.26 (and thereby waive the as-of-add fees that would otherwise be due) in exigent circumstances.⁵

The only portion of the proposal which has not yet been approved by the Commission is a proposed amendment to CBOE Rule 17.50(g) to include a fine schedule for substantial and repeated submissions by members of as-of-adds ("Minor Rule Plan Amendment"). Specifically, any member who exceeds the as-of-add rate considered nominal under Rule 2.26 by three times or more

for two consecutive months⁶ would be subject to a fine of \$250 for the first offense, \$500 for the second offense, and \$1,000 for each offense thereafter occurring during any 12-month period.⁷ The fines imposed pursuant to Rule 17.50(g) would be in addition to any fees due under Rule 2.26 and would serve to penalize those members who submit the greatest number of excessive as-of-add trades. Furthermore, in any circumstance in which a member's use of as-of-adds suggests that it may be appropriate to impose more severe disciplinary sanctions than would be provided for under Rule 17.50(g), the member would be subject to investigation and discipline in accordance with Chapter XVIII of CBOE's rules.⁸

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).⁹ Specifically, the Commission finds that incorporating a fine schedule into Rule 17.50(g) for substantial and repeated submissions of as-of-adds fees addresses the suggestions previously noted by the

⁶ The nominal as-of-add rate is currently 2.4% of an individual member's monthly trades and 1.2% of a clearing member's monthly trades. Accordingly, fines under this proposal would currently be triggered for an individual member whenever that member's as-of-add submissions equal or exceed 7.2% of total trade submissions in each of two consecutive months, while fines to clearing firms would be triggered whenever a clearing member's as-of-add submissions equal or exceed 3.6% of total trade submissions for each of two consecutive months.

⁷ These fines would be assessed on a rolling basis. For example, an individual member who is cited for a first offense for a minor rule violation for exceeding the nominal allowable number of as-of-adds by three or more times during each of December and January would be fined for a second offense if that member again exceeds the allowable number of as-of-adds by three or more times during February. See Exchange Act Release No. 35190, *supra* note 4.

⁸ The CBOE has issued a Regulatory Circular to members describing the portions of the proposal previously approved and the Minor Rule Plan Amendment. The Commission notes, however, that this Regulatory Circular stated that the Minor Rule Plan Amendment would apply retroactively as of January 1, 1995. See CBOE Regulatory Circular RG94-85, dated December 28, 1994. Because the Commission generally does not approve the retroactive application of rule changes, particularly with regard to the assessment of fees and fines, immediately following approval of the Minor Rule Plan Amendment, the Exchange will issue another Regulatory Circular notifying members of the approval and the revised implementation date for Minor Rule Plan Amendment, which is tentatively scheduled for February 1, 1995. This Regulatory Circular will also emphasize that serious instances or extended periods of as-of-add submissions will be subject to investigation and possible disciplinary action notwithstanding Rule 17.50(g).

⁹ 15 U.S.C. 78f(b)(5) (1988).

⁷ See Securities Exchange Act Release Nos. 34899 (October 26, 1994), 59 FR 54929 (November 2, 1994) (order approving File No. SR-CBOE-94-30); 34909 (October 27, 1994), 59 FR 55144 (November 3, 1994) (order approving File No. SR-PHLX-94-35); and 34913 (October 28, 1994), 59 FR 55300 (November 4, 1994) (order approving File No. SR-Amex-94-37).

⁸ 15 U.S.C. 78s(b)(2) (1982).

⁹ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1992).

³ Among other things, Rule 6.51 requires that each transaction be immediately reported to the Exchange in a form and manner prescribed by the Exchange. See Rule 6.51(a).

⁴ See Securities Exchange Act Release No. 35190 (January 3, 1995), 60 FR 3008 (January 12, 1995) ("Exchange Act Release No. 35190").

⁵ *Id.*