

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.²²

It is therefore ordered, pursuant to Section 19(b)(2),²³ that the proposed rule change (SR-Amex-95-01) is hereby approved until July 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35300; File No. SR-CBOE-94-46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Amendments to the Minor Rule Violation Fine Plan

January 31, 1995.

On November 21, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain provisions of CBOE Rule 17.50, "Imposition of Fines for Minor Rule Violations."

Notice of the proposed rule change appeared in the **Federal Register** on December 5, 1993.³ No comments were received on the proposal.⁴

²² No comments were received in connection with the proposed rule change which implemented these procedures. See 1992 Approval Order, *supra*, note 3.

²³ 15 U.S.C. 78s(b)(2) (1988).

²⁴ 17 CFR 200.30-3(a)(12) (1991).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 35014 (November 28, 1994), 59 FR 62429 (December 5, 1994).

⁴ On January 10, 1995, the CBOE amended its proposal to provide that fines imposed pursuant to CBOE Rule 17.50(b)(7) are subject to review by the Exchange's Appeals Committee. See Letter from Arthur B. Reinstein, Attorney, CBOE, to Sharon Lawson, Assistant Director, Division of Market

The CBOE proposes to amend CBOE Rule 17.50 to (1) extend the "lookback period" for determining certain sanctions; (2) limit the number of transactions for which a member may request verification; (3) clarify appeal procedures; (4) provide for the waiver of certain fees for appeals; (5) conform procedures for requests for review under CBOE Rule 17.50 with other CBOE rules; and (6) clarify certain provisions of the rule.

Specifically, the Exchange proposes to (1) amend CBOE Rule 17.50(g)(4) to extend from nine to 18 months the "lookback period" for failure to submit accurate trade information pursuant to CBOE Rule 6.51, "Reporting Duties;" and (2) amend CBOE Rule 17.50(g)(5) to create an 18-month "lookback period" for failure to submit trade information to the price reporter pursuant to CBOE Rule 6.51. The Exchange also proposes to amend CBOE Rule 17.50(g)(6) to provide that the maximum fine authorized under the Exchange's trading and decorum policies may be imposed for a first or second offense if warranted under the circumstances in the view of the Floor Officials Committee.

The CBOE proposes to amend Exchange Rule 17.50, Interpretation and Policy .03 to impose a cap on the number of transactions during a particular month for which a member fined more than twice in an 18-month period for failure to submit accurate trade information or failure to submit trade information to the price reporter may request verification. Under Interpretation and Policy .03, as amended, a member fined more than twice in an 18-month period may request verification of the greater of 50 transactions during a month or 10% of the number of transactions deemed not to be in compliance with CBOE Rule 6.51.

The CBOE also proposes several amendments to revise the procedures applicable to the appeal and review of fines imposed under CBOE Rule 17.50. First, the CBOE proposes to amend Exchange Rule 17.50(c)(1) to state explicitly the rights of members fined under the rule. The CBOE also proposes to add paragraph (d)(1) to clarify the procedures applicable to appeals from fines imposed for trading conduct and decorum violations to note that, among other things, a person fined for such violations may contest the Exchange's determination by filing a written application with the Secretary of the

Regulation, Commission, dated January 9, 1995 ("Amendment No. 1"). CBOE Rule 17.50(g)(7) establishes a fine schedule for failures to submit trade data on the trade date. See order approving File No. SR-CBOE-94-50.

Exchange pursuant to CBOE Rule 19.2, "Submission of Application to Exchange," and that a hearing, if requested, will be conducted in accordance with the provisions of CBOE Rules 19.3, "Procedure Following Applications for Hearing," and 19.4, "Hearing." Under paragraph (d)(2), the Appeals Committee may waive the forum fee if the Appeals Committee finds that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed by the Appeals Committee is a fine which is less than the total fine initially imposed by the Exchange.

In addition, the CBOE proposes to amend CBOE Rule 17.50(c) to provide the Exchange's Business Conduct Committee ("BCC")⁵ and the Appeals Committee with the discretion to waive the forum fee provided for if the applicable committee finds that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed is a fine which is less than the total fine initially imposed by the Exchange. The CBOE believes that this amendment will lead to a more equitable resolution of certain appeals under CBOE Rule 17.50 in situations where the committees believe that a waiver of the forum fee is warranted; such situations arise, for example, when a fine is reduced on appeal.

The CBOE also proposes to amend CBOE Rule 17.50(c)(3) and to add (d)(3) to make the procedures applicable to requests by the Board of Directors ("Board") for review by the Board of determinations of the Appeals Committee under CBOE Rule 17.50 consistent with the procedures applicable to similar requests regarding other decisions of these committee as provided in CBOE Rules 17.10(c) and 19.5(a).

Finally, the CBOE proposes a nonsubstantive change to clarify CBOE Rule 17.50(g)(1), "Violation of position limit rules," by deleting a potentially confusing reference to CBOE Rule 24.4, "Position Limits for Broad-Based Index Options." Currently, CBOE Rule 17.50(g)(1), which applies to violations of all of the Exchange's position limit rules, only specifically references CBOE

⁵ The BCC has decision-making authority concerning possible violations within the disciplinary jurisdiction of the Exchange. The BCC reviews CBOE staff investigatory reports and issues statements of charges, accepts or rejects offers of settlement and letters of consent, holds hearings and conducts summary proceedings, serves written decisions on the parties to proceedings, and, when appropriate, imposes sanctions, including expulsions, suspensions, fines, censures, and other fitting sanctions.