Rules 4.11, ''Position Limits,'' and 24.4(a), and does not specifically reference the other CBOE rules which determine compliance with CBOE Rule 4.11, the Exchange's general rule governing position limits.[6] Although the CBOE states that this is not technically incorrect—because all position limit violations, no matter what type of option they relate to, are violations of CBOE Rule 4.11—the current references are potentially confusing. Therefore, to eliminate potential confusion, the CBOE proposes to delete the reference to CBOE Rule 24.4(a), so that CBOE Rule 17.50(g)(1), as amended, will refer only to CBOE Rule 4.11.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(7), in particular, in that it enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

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, with the requirements of Sections 6(b)(5), 6(b)(6), and 6(b)(7).[7] Section 6(b)(6) of the Act requires that the rules of the Exchange provides that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules. As noted above, the CBOE proposes to amend CBOE Rule 17.50 to (1) extend to 18 months the ''lookback period'' for failure to submit accurate trade information pursuant to CBOE Rule 6.51;[8] (2) create an 18-month ''lookback period'' for failure to submit trade information to the price reporter pursuant to CBOE Rule 6.51;[9] and (3) provide that the maximum fine authorized under the Exchange's trading and decorum policies may be imposed for a first or second offense if the Floor Officials Committee believes that such action is warranted. The Commission believes that these amendments to CBOE Rule 17.50 will provide for prompt, effective and appropriate discipline of CBOE Rule 6.51 and of the Exchange's trading and decorum policies.

In addition, the Commission notes that the current fine schedules provided in CBOE 17.50 for violations of CBOE rule 6.51 are graduated to account for repeat offenders and that allowing the Exchange to create 18-month ''lookback periods'' is consistent with the existing framework of graduated fines and may increase the CBOE's ability to deter repeat offenders. By encouraging market makers and floor brokers to submit accurate trade information and to submit information to the price reporter, the proposal should enhance the accuracy of the CBOE's audit trails and, in turn, protect investors and the public interest by helping the CBOE to enforce compliance by its members with the federal securities laws and the CBOE's rules.

The Commission also believes that it is reasonable for the CBOE to amend CBOE Rule 17.50, Interpretation and Policy .03 to limit the number of transactions during a month for which a member fined more than twice during an 18-month period under CBOE Rule 17.50(g)(4) or (g)(5) may request verification of the fine. Specifically, under the proposal, if a member receives three or more such fines during an 18-month period he will be permitted to request verification of the greater of 50 transactions or 10% of the number of transactions deemed not to be in compliance with CBOE Rule 17.50(g)(4) or 17.50(g)(5). The proposed cap will apply separately to fines imposed under CBOE Rules 17.50(g)(4) and 17.50(g)(5).

The Commission believes that the proposal to amend CBOE Rule 17.50, Interpretation and Policy .03 to limit the number of transactions during a particular month for which a member may request verification strikes a reasonable balance between providing CBOE members with a reasonable opportunity to request verification of fines imposed for failure to submit accurate trade information or failure to submit trade information to the price reporter and limiting the administrative burden associated with verification of the transactions. In this regard, the CBOE states that the majority of verification requests involve the review of between 30 and 150 transactions and that the Exchange has had to devote an increasing amount of CBOE staff time and resources to processing the verification requests. According to the CBOE, the proposed cap will affect a small percentage of the members requesting verification and will materially reduce the total number of transactions that will be reviewed by the Exchange's surveillance staff.

At the same time, the Commission believes that the proposed amendment to CBOE Rule 17.50, Interpretation and Policy .03 does not compromise members' rights to fair procedures in CBOE disciplinary proceedings. Specifically, the Commission notes that the limit on verification requests does not apply to members who receive less than three fines for violations of either CBOE Rule 17.50(g)(4) or 17.50(g)(5) during an 18-month period and that the proposal limits, but does not eliminate, a member's ability to request verification of transactions during a particular month. In addition, the Commission notes that a member fined under CBOE Rule 17.50 may contest the fine imposed pursuant to CBOE Rule 17.50 through the submission of a written answer as provided in CBOE Rule 17.5, ''Answer,'' when the matter will become subject to review by the Exchange's BCC.[10]

The Commission believes that it is reasonable for the CBOE to amend CBOE Rule 17.509c)(1) to state explicitly the right of members fined under CBOE Rule 17.50, including members who receive fines exceeding $2,500 for trading conduct and decorum policy violations, to contest the Exchange's determination by filing an answer under CBOE Rule 17.5. In addition, the Commission believes that it is reasonable for the Exchange to add paragraph (d) to CBOE Rule 17.50, which specifies the procedures applicable to appeals of trading conduct and decorum policy violation fines not exceeding $2,500 imposed pursuant to CBOE Rule 17.50(g)(6) and fines imposed pursuant to CBOE Rule 27.50(g)(7).[11]

The Commission believes that the amendments to CBOE Rule 17.50(c) and addition of paragraph (d) clarify the appeal procedures available to members fined under CBOE Rule 17.50, thereby helping to ensure that the Exchange provides fair procedures for the disciplining of members, consistent with Section 6(b)(7) of the Act. The Commission believes that right to appeal sanctions imposed under CBOE Rule 17.50 will help to safeguard the procedural rights of sanctioned persons while preserving the Exchange's ability to adjudicate minor rule violations in a timely and efficient manner through the process established in CBOE Rule 17.50.

In addition, the Commission believes that it is reasonable for the Exchange to amend its rules to provide BCC and the

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[6] Other CBOE position limit rules which establish ways to determine compliance with CBOE Rule 4.11 with respect to particular types of options include CBOE Rule 24.A, ''Position Limits for Industry Options,'' CBOE Rule A.7, ''Position Limits'' (Flexible Exchange Options), CBOE Rule 21.3, ''Position Limits'' (Treasury Bonds and Notes), and CBOE Rule 23.3, ''Position Limits'' (interest rate options).

[7] 15 U.S.C. 78f(b)(5), (6), and (7) (1988).

[8] *See* CBOE Rule 17.50(g)(4).

[9] *See* CBOE Rule 17.50(g)(5).

[10] See CBOE Rule 17.50(c).

[11] See Amendment No. 1, *supra* note 4.