

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39324; File No. SR-CBOE-97-53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Exchange Fees

November 13, 1997.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on October 3, 1997, 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

The Exchange seeks to establish various fees and discounts relating to options based on Dow Jones & Company ("Dow Jones") indexes, and the use of the Exchange's new cellular phone and pager systems. The Exchange also seeks to indefinitely suspend its Prospective Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange and at the Commission.

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 purpose of the proposed rule change: is (i) To establish fees relating to options based on Dow Jones indexes, three of which began trading on October 6, 1997;² (ii) to indefinitely suspend, effective October 1, 1997, the Exchange's Prospective Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues;³ (iii) to establish user fees relating to the Exchange's new trading-floor cellular phone system; and (iv) to impose fees for the repair of abusive damage to pagers. The Exchange is implementing these fee changes pursuant to Exchange Rule 2.22.

The Exchange proposes to establish a transaction fee schedule for all options based on Dow Jones indexes that is identical to the current OEX transaction fee schedule. The fees would be as follows: (1) Forty cents per contract for customer transactions that have a premium greater than or equal to one dollar; (2) twenty cents per contract for customer transactions that have a premium less than one dollar; (3) ten cents per contract for member firm proprietary transactions; and (4) six cents per contract for market maker transactions.

In addition, the Exchange proposes to apply a Large Trade Discount Program to Dow Jones indexes, through which customer orders in excess of one thousand contracts would receive a discount. While the first one thousand contracts of a customer order will be assessed regular transaction fee rates, all contracts in excess of one thousand would receive a fifty percent discount. It should be noted that the discount program relating to Dow Jones products will be separate and distinct from the Large Trade Discount Program currently applicable to all other Exchange products. The Exchange proposes to cap Retail Automated Execution System ("RAES") fees for Dow Jones indexes, so that the fee of twenty five cents per

² On October 6, 1997, the Exchange commenced trading options on the following Dow Jones indexes: the Dow Jones Industrial Index ("DJX"), the Dow Jones Utilities Index ("DUX"), and the Dow Jones Transportation Index ("DTX").

³ The Exchange filed its proposed rule change with the Commission on October 3, 1997. However, the proposed rule change indefinitely suspends the Exchange's Prospective Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues, as of October 1, 1997. The Commission notes that a proposed rule change made pursuant to Section 19(b)(3)(A) of the Act, such as SR-CBOE-97-53, is not effective until filed with the Commission.

contract only applies to the first twenty five contracts of any RAES order.

The Exchange also proposes, effective October 1, 1997, to indefinitely suspend its Prospective Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues. As a result of the large expenditure of resources devoted to the commencement of options trading in the Dow Jones indexes, the Exchange finds it necessary to indefinitely suspend its Prospective Fee Reduction Program to recoup working capital.

The Exchange further proposes to establish fees for its new trading-floor cellular phone system. A lease fee of one hundred dollars per month is proposed to be charged for each cellular phone. Additionally, a lost, stolen, or damaged phone fee will be assessed at the current replacement or repair cost.

Finally, the Exchange proposes to impose a fee for abusive damage to pagers. The fee will be assessed at the current repair cost.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)⁴ of the Act, in general, and furthers the objectives of Section 6(b)(4)⁵ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

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

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing 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)⁶ of the Act and subparagraph (e) of Rule 19b-4⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(e).

¹ 15 U.S.C. 78s(b)(1).

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. 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-CBOE-97-53 and should be submitted by December 12, 1997.

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. 34-39323; File No. SR-CHX-97-24]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc; Order Granting Accelerated Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to a Ban on the Entry of Certain Stop Orders and Stop Limit Orders

November 13, 1997.

I. Introduction

On September 22, 1997, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to 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 adopt a new rule to prohibit the entry of certain stop orders and stop limit orders if the New York Stock Exchange ("NYSE") implements a stop order ban pursuant to NYSE Rule 80A.

The proposed rule change was published for comment in the **Federal Register** on October 20, 1997.³ No comments were received on the proposal. On October 31, 1997, the CHX submitted Amendment No. 1 to the proposed rule change.⁴ This order approves the proposed rule change and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to add Article IX, Rule 10B (Stop Order Ban Due to Extraordinary Market Volatility) to prohibit the entry of certain stop orders and stop limit orders if the NYSE implements a stop order ban pursuant to NYSE Rule 80A. The NYSE's Rule 80A prohibits the entry of stop orders and stop limit orders if the price of the primary Standard and Poor's 500 Stock Price Index⁵ futures contract traded on the Chicago Mercantile Exchange reaches a value 12 points below the contract's closing value on the previous trading day. Likewise, the Boston Stock Exchange ("BSE") prohibits the entry of stop and stop limit orders on the BSE when the NYSE has a ban in place.⁶ The Exchange's new rule would exempt from the ban stop orders and stop limit orders of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from the individual investor.

The Exchange has previously adopted circuit breaker rules on a pilot basis⁷

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 39320 (October 10, 1997) 62 FR 54496.

⁴ See Letter from Charles R. Haywood, Foley & Lardner, to Debbie Flynn, Division of Market Regulation, SEC, dated October 30, 1997 ("Amendment No. 1"). In Amendment No. 1, the CHX requested that the rule filing by approved on an accelerated basis due to the recent volatility in the financial markets and the Exchange's belief that such volatility may continue.

⁵ Standard and Poor's 500 Stock Index is a service mark of Standard and Poor's Corporation.

⁶ See Ch. II, Sec. 35(b) of the BSE's rules.

⁷ See Securities Exchange Act Release Nos. 26218 (October 26, 1988) 53 FR 44137 (November 1, 1988) (order approving File No. SR-MSE-88-9); 27370 (October 23, 1989) 54 FR 43881 (October 27, 1989) (order approving File No. SR-MSE-89-9); 28580 (October 25, 1990) 55 FR 45895 (October 31, 1990) (order approving File No. SR-MSE-90-16); 29868 (October 28, 1991) 56 FR 56535 (November 5, 1991) (order approving File No. SR-MSE-91-14); 33120

which parallel the circuit breaker rules of the NYSE.⁸ Such rules are designed to dampen market volatility by providing a "time-out" to permit investors and market professionals to evaluate the state of the market. However, unlike the NYSE, the Exchange has not previously prohibited the entry of stop and stop limit orders during times of market stress.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirement of Section 6 of the Act⁹ and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act¹¹ in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. Specifically, the Commission believes that the prohibition against accepting stop orders and stop limit orders of up to 2,099 shares, during periods of market stress will facilitate the maintenance of an orderly market and reduce market volatility.

The Commission recognizes that banning the entry of stop orders and stop limit orders in a significant market decline may help to reduce market volatility related to increased selling pressure in the security. The Commission believes that banning the entry of stop orders and stop limit orders in dually-traded issues when NYSE Rule 80A is in effect should prevent the transfer of market volatility from the NYSE to the CHX. The Commission believes that the CHX proposal represents a reasonable effort to arrive at a coordinated means to address potential strain on the market that may develop should the CHX become inundated with orders that have been banned pursuant to NYSE Rule 80A.

The Commission notes that stop orders and stop limit orders on the specialist's book at the time the ban is

(October 29, 1993) 58 FR 59503 (November 9, 1993) (order approving File No. SR-CHX-93-22); 36414 (October 25, 1995) 60 FR 55630 (November 1, 1995) (order approving File No. SR-CHX-95-23); 37459 (July 19, 1996) 61 FR 39172 (July 26, 1996) (order approving File No. SR-CHX-96-20); and 38221 (January 31, 1997) 62 FR 5871 (February 7, 1997) (order approving File No. SR-CHX-96-33).

⁸ See CHX Art. IX, Rule 10A.

⁹ 15 U.S.C. 78f.

¹⁰ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30(a)(12).