

acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trust in reliance on section 12(d)(1) (F) or (G) of the Act. Applicants state that the proposed arrangement would comply with provisions of section 12(d)(1)(G), but for the fact that the Equity Fund's policies contemplate that it will invest in Index Securities and may invest in Other Securities.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt, conditionally or unconditionally, persons or transactions from the provisions of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants believe that permitting the Equity Fund and other Upper Tier Funds to invest in securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the Board of Directors of the Company, on behalf of the Equity Fund or an Upper Tier Fund, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services that are provided under any Underlying Fund's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the Company's minute books on behalf of the Equity Fund or Upper Tier Fund.

2. Applicants will comply with all of the provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Equity Fund or an Upper Tier Fund from investing in securities as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-26; File No. S7-13-99]

#### Privacy Act of 1974: Establishment of Two Systems of Records: Disgorgement and Penalties Tracking System (SEC-47) and Fitness Center Membership, Payment, and Fitness Records (SEC-48)

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of the establishment of two systems of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission gives notice of the establishment of two new Privacy Act systems of records: Disgorgement and Penalties Tracking System (SEC-47) and Fitness Center Membership, Payment, and Fitness Records (SEC-48).

**DATES:** The proposed systems will become effective June 1, 1999, unless further notice is given. The Commission will publish a new notice if the effective

date is delayed to review comments, or if changes are made based on comments received. To be assured of consideration, comments must be received on or before May 24, 1999.

**ADDRESSES:** Persons wishing to submit comments should file three (3) copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 0609, Washington, DC 20549-0609. Reference should be made to File S7-13-99.

Copies of the comments will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

#### FOR FURTHER INFORMATION CONTACT:

Betty Lopez, Privacy Act Officer (202) 942-4327, Office of Filings and Information Services, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O-5, Alexandria, VA 22312-2413.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission ("Commission" or "SEC") gives notice of the establishment of two systems of records entitled Disgorgement and Penalties Tracking System (SEC-47) and Fitness Center Membership, Payment, and Fitness Records (SEC-48).

The SEC is establishing SEC-47 to facilitate SEC staff tracking of the repayment of disgorgement and penalties imposed on entities and individuals who have been determined to be violators of the provisions of the federal securities laws in SEC-initiated civil actions and administrative proceedings. The Commission's staff uses the records for case administration and collections. The system also is used to provide status reports to the Congress and the Department of the Treasury, and for responding to requests for information filed under the Freedom of Information Act.

The SEC is establishing SEC-48 in order to maintain payment and fitness information needed for operating the SEC Fitness Center. The SEC established the Fitness Center to provide fitness facilities to members of the Commission's staff. Members of the Commission's staff oversee the Fitness Center and have access to SEC-48 records in order to perform their official Fitness Center duties.

The systems of records reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, have been submitted to the Committee on Government Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," as

amended on February 20, 1996 (61 FR 6428, 6435).

Accordingly, the Commission is adding the following systems of records.

#### SEC-47

##### SYSTEM NAME:

Disgorgement and Penalties Tracking System.

##### SYSTEM LOCATION:

Securities and Exchange Commission, Office of the Secretary, 450 Fifth Street, NW, Mail Stop 0609, Washington, DC 20549-0609.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or entities that have been ordered to pay disgorgement and/or monetary penalties in SEC injunctive actions and administrative proceedings.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Information on individuals or entities from whom the Commission is seeking or has obtained an order to pay disgorgement and/or monetary penalties, including the individual's or entity's name; the dates the Commission authorized, instituted, and/or settled an action; the responsible Commission staff; the internal case tracking number; the date the judgment or administrative order was entered; the amount of disgorgement and/or monetary penalties to be paid; the payment due date for disgorgement and/or monetary penalties; the date and amount of payments; the amount of disgorgement waived; and the status of debt collection efforts.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77h-1, 77t, 77x, 78u, 78ff, 79z-3, 80a-9, 80a-41, 80a-48, 80b-3, and 80b-9.

##### PURPOSE(S):

The system is being initiated to enable the Commission's staff to track the collection of disgorgement and monetary penalties arising out of SEC-initiated civil actions and administrative proceedings to enforce the federal securities laws.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the conditions for disclosure specified at 5 U.S.C. 552a(b), the SEC's staff may use these records and the information contained in the records routinely, as provided at 5 U.S.C. 552a(b)(3), as follows:

(1) To provide information to the Department of the Treasury, on a quarterly and annual basis, on the Commission's monetary penalty receivables;

(2) To provide information to the Department of the Treasury and other federal agencies while assisting in the collection of past due disgorgement and/or monetary penalties; and

(3) To provide information to persons, as appropriate, while assisting in the collection of past due disgorgements and/or monetary penalties.

##### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Records are maintained electronically and on paper.

##### RETRIEVABILITY:

Records may be retrieved electronically by the internal case tracking number, the case name, and the individual's or entity's name. Paper records may be retrieved by the internal case tracking number.

##### SAFEGUARDS:

Paper records are kept in locked file cabinets. Electronic records can be retrieved only by authorized persons using appropriate passwords.

##### RETENTION AND DISPOSAL:

Paper records and computer database records are maintained until matter is closed plus 25 years.

##### SYSTEM MANAGER(S) AND ADDRESS:

Secretary, Office of the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 0609, Washington, DC 20549-0609.

##### NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual or entity may be directed to the Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O-5, Alexandria, VA 22312-2413.

##### RECORDS ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O-5, Alexandria, VA 22312-2413.

##### CONTESTING RECORD PROCEDURES:

See record access procedures above.

##### RECORD SOURCE CATEGORIES:

Information is provided by Commission staff, and is extracted from Commission memoranda, Commission releases, judgments, and administrative

orders. Additional information regarding the status of payments is provided in the form of copies of checks and/or money orders and from the Department of the Treasury's debt collection referral program.

##### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

#### SEC-48

##### SYSTEM NAME:

Fitness Center Membership, Payment, and Fitness Records.

##### SYSTEM LOCATION:

Securities and Exchange Commission, Fitness Center, 450 Fifth Street, NW, Washington, DC 20549.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the SEC's staff who have become members of the Fitness Center.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Membership applications, fee and payment information (including electronic debit information), and fitness progress charts.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, *et seq.*

##### PURPOSE(S):

The system was initiated to enable SEC Fitness Center staff to track Fitness Center membership, fee payments, and the physical fitness of members.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

No routine use disclosures have been established for these records. The records and information obtained in these records will not be disclosed outside the SEC, unless mandated by law. See the statutory conditions of disclosure at 5 U.S.C. 552a(b).

##### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Records are maintained electronically and on paper.

##### RETRIEVABILITY:

Records are retrieved by the individual's name or membership number.

##### SAFEGUARDS:

Paper records are kept in locked file cabinets. Electronic records can be retrieved only by authorized persons using appropriate passwords.

**RETENTION AND DISPOSAL:**

Records are maintained for as long as an individual is a member of the Fitness Center plus six months.

**SYSTEM MANAGER(S) AND ADDRESS:**

Associate Executive Director, Office of Administrative and Personnel Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O-1, Alexandria, VA 22312-2413.

**NOTIFICATION PROCEDURE:**

All requests to determine whether this system of records contains a record pertaining to the requesting individual or entity may be directed to the Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O-5, Alexandria, VA 22312-2413.

**RECORDS ACCESS PROCEDURES:**

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O-5, Alexandria, VA 22312-2413.

**CONTESTING RECORD PROCEDURES:**

See record access procedures. above.

**RECORD SOURCE CATEGORIES:**

All information is provided by Fitness Center members.

**EXEMPTION CLAIMED FOR THE SYSTEM:**

None.

Dated: April 14, 1999.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-41289; File No. SR-CBOE-99-12]

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

April 14, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 there under,<sup>2</sup> notice is hereby given that on March 31, 1999, 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 CBOE. 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 is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage*.<sup>3</sup>

**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 CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, 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**

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee approved the following fees for the following option classes:<sup>4</sup>

Option Class	Market-Maker Surcharge (per contract)	Order Book Official Brokerage Rate (per contract) <sup>4</sup>
Yahoo (YHQ) .....	\$0.10	\$0.00
Citigroup (C) .....	0.06	0.00
Amazon (ZQN) .....	0.10	0.00
Worldcom (LDQ) .....	0.10	0.00
U.S. Web (QWB) .....	0.03	0.00
Mindspring .....	0.03	0.00
(MQD).		
Doubleclick .....	0.04	0.00
(QTD).		

These fees will be effective as of April 1, 1999, and will remain in effect until such time as the Equity Floor Procedure Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with Section

<sup>3</sup> See Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999)(order approving CBOE Rule 2.40).

<sup>4</sup> The surcharge will be used to reimburse the Exchange for the reduction in the Order Book

Official brokerage rate form \$0.20 in the relevant options classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in exchange Rule 2.40.