

or greater in listed securities volume reported to the Consolidated Tape Association ("CTA"). In addition, as part of the credit program, the BSE proposes to include 50% Tape Revenue sharing for revenue generated on the same Floor-Brokered volume.<sup>5</sup> After the first six (6) months of the program, the credit of 100% of the Trade Recording and Value Charge revenue will be reduced to 50%. CTA revenue sharing will remain at the current rate of 50%. The purpose of the credit program for the specialists is to acknowledge the importance of their participation in the Exchange's overall initiative by implementing incentives for specialists to increase the number of issues, and related executions, traded on the BSE.

Additionally, the BSE also proposes to amend its Transaction Fees schedule by revising the rate at which it charges member firms that route orders to the BSE and also provide BSE specialists with the capability of routing order flow to other exchanges (for example, through DOT<sup>6</sup> terminals). A firm may currently use its automated inbound volume that it routes to the BSE to qualify for reduced rates on outbound volume executed through its DOT terminals and will continue to be able to do so. However, a firm that provides automated inbound volume to the BSE, will now be charged rates on its outbound volume (up to the amount of inbound volume routed to the BSE) of \$.025/100 shares. Rates on outbound volume executed in excess of automated inbound volume routed to the BSE will continue to be charged at the rate of \$.05/100 shares, as previously established. These fees are necessary to offset systems related expenses incurred by the Exchange in providing facilities for its member firms to provide layoff

services to the BSE specialist community.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it is an 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 that 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

No written comments were either solicited or received.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder.<sup>10</sup> Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily 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, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-2003-12 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48394; File No. SR-CBOE-2003-28]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Open Outcry Size Guarantees

August 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 21, 2003, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") 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 proposed rule change has been filed by CBOE under Rule 19b-4(f)(6) under the Act.<sup>3</sup> 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

CBOE proposes to amend its rules relating to open outcry size guarantees in those classes of options that trade on the CBOE Hybrid System ("Hybrid"). Below is the text of the proposed rule change. Proposed new language is in *italics*.<sup>4</sup>

\* \* \* \* \*

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> The Commission notes that it added language to the rule text that was inadvertently omitted by CBOE. Telephone call between Steve Youhn, Legal

<sup>5</sup> The BSE represented to the Commission that the proposed BSE specialist Revenue Sharing Program will not result in a market data revenue rebate that exceeds 50% of Tape A or B market data revenue. See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation). The BSE represented that the instant proposal simply clarifies the BSE's existing Revenue Sharing arrangement, which does not specifically indicate to whom market data revenue rebates are to be awarded. The Commission has relied on the BSE's representations in not abrogating the proposed fee filing. Telephone conference between John Boese, Vice President Legal and Compliance, BSE, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (August 22, 2003).

<sup>6</sup> DOT is the New York Stock Exchange's ("NYSE") Designated Order Turnaround System, an application that permits NYSE members to route market orders and day limit orders on an automated basis directly to the appropriate specialist on the NYSE trading floor. See Securities Exchange Act Release No. 16649 (March 13, 1980), 45 FR 18541.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

**Rule 8.7 Obligations of Market Makers**

- (a)–(c) No change  
 (d) No Change  
 (i) Market Maker Trades Less Than 20% Contract Volume Electronically: No change  
 (A)–(B) No change  
 (C) Continuous Open Outcry Quoting Obligation: In response to any request for quote by a floor broker or DPM representing an order as agent, market makers must provide a two-sided market complying with the quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts *for non-broker-dealer orders and one contract for broker-dealer orders.*  
 (D) No change  
 (ii) Market Maker Trades More Than 20% Contract Volume Electronically: No change  
 (A)–(B) No change  
 (C) Continuous Open Outcry Quoting Obligation: In response to any request for quote by a floor broker or DPM representing an order as agent, market makers must provide a two-sided market complying with the current quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts *for non-broker-dealer orders and one contract for broker-dealer orders.*

\* \* \* \* \*

**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 parts of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change****1. Purpose**

In May 2003, the Commission approved trading rules for Hybrid,<sup>5</sup> a trading platform that alters the fundamental way in which the

Exchange conducts business. Hybrid merges the electronic and open outcry trading models and offers market participants the ability to stream electronically their own quotes. Previously (and currently in non-Hybrid classes), CBOE's disseminated quote represented, for the most part, the Designated Primary Market Maker's ("DPM") autoquote price. Market makers ("MMs") were able to affect changes to that quote in open outcry (or by putting up manual quotes). Hybrid offers in-crowd MMs and in-crowd DPMs the opportunity to submit their own firm disseminated market quotes that represent their own trading interest.<sup>6</sup> In addition, Hybrid permits in-crowd floor brokers, who represent orders on behalf of members, broker-dealers, public customers, and the firm's proprietary account, to enter orders on behalf of their customers for display in the CBOE's best bid or offer ("BBO").<sup>7</sup> Whereas, prior to Hybrid, there was only one autoquote price comprising the CBOE disseminated quote, Hybrid allows for the introduction of multiple quotes in the quoting equation.

CBOE Rules 8.7(d)(i)(C) and (d)(ii)(C), which only apply to classes trading on Hybrid, impose a 10-up size requirement for MMs responding to a request for a market in open outcry by a floor broker ("FB") representing an order as agent.<sup>8</sup> CBOE represents that the intent of CBOE Rules 8.7(d)(i)(C) and (d)(ii)(C) when adopted was to ensure that FBs representing public customer orders would receive a quote of sufficient depth whenever they requested a market in open outcry. CBOE believes that the plain language of CBOE Rules 8.7(d)(i)(C) and d(ii)(C), however, is overbroad and could be interpreted to apply to broker-dealer ("BD") orders represented by FBs. Accordingly, the Exchange proposes to amend these two rule provisions to: (a) Limit the applicability of the 10-up size guarantee to public customer orders represented by FBs; and (b) provide that MMs must provide a one-up market to BD orders represented by FBs. This proposed change only affects Hybrid classes and, as such, has no applicability to non-Hybrid classes.

CBOE represents that the proposed changes do not affect the operation of

CBOE's Quote Rule (CBOE Rule 8.51), which allows the responsible BD to provide separate quote sizes to public customers and broker-dealers.<sup>9</sup> FBs representing a public customer order in a Hybrid class will be able to request a quote on behalf of such public customer from MMs in the crowd and will be guaranteed to receive a firm quote for at least ten contracts. At the same time, a FB representing a BD order in a Hybrid class will be able to request a quote on behalf of a BD and will be guaranteed to receive a firm quote for at least one contract. Accordingly, allowing MMs to provide 1-up open outcry markets to BD orders is consistent with their obligations under the CBOE Quote Rule because the BD firm quote requirement, which is one contract, is satisfied.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

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

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

CBOE neither solicited nor received written comments with respect to the proposed rule change.

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

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file

Division, CBOE, and Frank N. Genco, Attorney, Division of Market Regulation ("Division"), Commission, on August 19, 2003.

<sup>5</sup> See Exchange Act Release 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (approving File No. SR-CBOE-2002-05).

<sup>6</sup> Telephone conversation between Steve Youhn, Legal Division, CBOE, and Kelly M. Riley, Senior Special Counsel, Division, on August 20, 2003.

<sup>7</sup> *Id.* Pursuant to CBOE Rule 6.75, floor brokers generally may not execute any orders for which they have been vested with the discretion to choose: the class of options to buy/sell, the number of contracts to buy/sell, or whether the transaction would be one to buy or sell.

<sup>8</sup> CBOE Rule 8.7(d) only applies to Hybrid classes.

<sup>9</sup> The BD firm quote requirement on CBOE is one contract. See CBOE Rule 8.51.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

the proposed rule change at least five business days prior to the date of filing of the proposed rule change,<sup>12</sup> it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

CBOE has requested that the Commission waive the usual 30-day pre-operative waiting period. The Commission notes that this proposal is substantially similar to existing Pacific Exchange, Inc. ("PCX") Rule 6.37(b)(5) and Interpretation .05 to PCX Rule 6.37 approved by the Commission.<sup>15</sup> As a result, the Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date because the proposal raises no new regulatory issues. Therefore, the Commission designates that the proposal become operative immediately.<sup>16</sup>

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-2003-28 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48411; File No. SR-GSCC-2002-04]

#### Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Institute Informal Hearing Procedures for Fine Disputes

August 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 28, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on August 19, 2003, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC's current rules provide procedures whereby a member can dispute any fine through a formal hearing process. GSCC's rules also permit GSCC to establish procedures for a hearing not otherwise provided for in its rules. The proposed rule change would allow GSCC to institute informal hearing procedures for disputed fines.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since 1998, GSCC has had the authority to impose fines in order to promote greater compliance with its funds settlement debit and clearing fund deposit deficiency call deadlines.<sup>3</sup> GSCC Rule 37 contains procedures whereby a member can dispute any fine assessment through a formal hearing process. Rule 37 also permits GSCC to establish procedures for a hearing not otherwise provided for in the rules.<sup>4</sup> With this proposed rule filing, GSCC seeks authority to specifically incorporate into its rules informal hearing procedures with respect to disputed fines.

Pursuant to GSCC's new procedures, when a formal hearing is requested to dispute a fine, an informal hearing will automatically take place prior to a formal hearing occurring. Thus, if a member disputes a fine and asks for a formal hearing in the manner already specified in the rules, GSCC's management will automatically conduct a review of the disputed fine. Based on the documentation already required in the rules and/or a meeting arranged with the member, management may determine to waive the fine. If management determines to waive the fine, it must inform the Membership and Risk Management Committee of the waiver and management's reasons for granting the waiver. The Committee has the ability to accept or reject management's determination. If the Committee accepts management's determination, the fine will be waived. However, if the Committee chooses not to accept management's determination or if management initially determined not to waive the fine after conducting its review, the member has the right to the formal hearing already provided for in Rule 37.

GSCC also seeks to change its rules to reflect that if a fine is assessed, the member must pay the fine within 30 calendar days after it receives the fine

<sup>12</sup> On July 3, 2003, CBOE provided the Commission with written notice of its intent to file the proposed rule change. See letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated July 2, 2003.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> See Securities Exchange Act Release No. 47211 (January 17, 2003), 68 FR 3924 (January 27, 2003) (approving File No. SR-PCX-2002-55).

<sup>16</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup> Securities Exchange Act Release No. 39746 (March 12, 1998), 63 FR 13439 (March 19, 1998) [File No. SR-GSCC-97-04].

<sup>4</sup> Government Securities Clearing Corporation Rule 37, Section 7.