

and \$5,000 for an oral hearing, and \$5,000 for appeals to the Committee.

In addition, the Amex proposes that, in the case of a delisting hearing, a listed company seeking an appeal of a Staff delisting determination be required to satisfy all outstanding listing fees due to the Exchange before any payment will be credited towards a hearing fee. The Amex believes that, in some cases, listed companies with substantial unpaid listing fee balances have been able to engage in frivolous appeals in order to delay an inevitable delisting. While the appeal process provides an important avenue to seek a review of Staff determinations, the Exchange does not believe it is appropriate for a listed company that is delinquent with respect to its listing fees to be able to access this process. In this connection, the Amex notes that a listed company that appears to be delinquent with respect to fees owed is given many opportunities to question the invoices and past due bills sent, if the company believes that the fees assessed are erroneous. Further, failure to pay listing fees in and of itself subjects the company to delisting pursuant to Section 1003(iv) of the *Amex Company Guide*, and a listed company which is delinquent with respect to its listing fees will have received notice to this effect in connection with the Staff delisting determination. Therefore, the Exchange believes that there are sufficient safeguards in place to prevent a listed company from being unfairly barred from appealing a delisting.⁴

The Amex also proposes that Sections 1203 and 1204 of the *Amex Company Guide* be clarified to specify that appeal requests must be submitted to the Amex Office of General Counsel.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change furthers the objectives of Section 6(b)(5)⁶ in that the proposal is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade, to foster cooperation and coordination with

persons engaged in facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change will impose any 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 solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-Amex-2003-111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, your comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to the File No. SR-Amex-2003-111 and should be submitted by February 19, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49118; File No. SR-CBOE-2003-60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No.1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Calendar Year 2004 Fees

January 22, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on December 31, 2003, 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 CBOE. On January 16, 2004, the Exchange submitted Amendment No. 1 to the proposal by facsimile.³ The proposed rule change, as amended, has been filed by the CBOE as establishing or changing a due, fee, or other charge, pursuant to section

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, from Christopher R. Hill, Attorney II, CBOE, dated January 16, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange revised the rule text to clarify the time period that the customer large trade discount pilot plan will be in effect.

⁴ Furthermore, any company that believes it has been improperly denied a hearing would have the right to appeal such denial to the Securities and Exchange Commission as provided in Section 19(d) of the Act and Rule 19d-3 thereunder. See 15 U.S.C. 78s(d); 17 CFR 240.19d-3.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2)⁵ thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to make three changes to its fee schedule to commence at the start of calendar year 2004. The text of the proposed rule change is available at the Office of the Secretary, CBOE, 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 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, 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 Exchange proposes the following changes to its fee schedule to commence at the start of calendar year 2004:

Elimination of Fee for Electronic Delivery of Exchange Bulletin

The Exchange Bulletin ("Bulletin") publishes a variety of news and notifications of interest to Exchange members and market participants. Each member receives one complementary subscription. Currently, non-members, as well as members who wish to receive more than one subscription, are charged \$200 annually to have a hard copy subscription mailed to them, and \$100 per year to have an electronic copy sent to them by e-mail. These charges help offset the costs incurred by the Exchange to produce and deliver such subscriptions.

The Exchange now proposes to eliminate all charges for e-mail delivery of Bulletin subscriptions, both for non-member subscriptions and additional member subscriptions. The Exchange proposes this change to encourage

greater use of electronic delivery, and to pass on to Bulletin subscribers the cost efficiencies that the Exchange is realizing from increased electronic delivery.

Extension of Customer Large Trade Discount Program

In July 2003, as part of its fiscal year 2004 fee changes, the Exchange established a Customer Large Trade Discount pilot program to be in effect through December 2003.⁶ The Exchange now proposes to extend this pilot through the end of fiscal year 2004 on June 30, 2004, in order to continue to provide discounts to customers on large trades. The terms of the pilot will remain unchanged.

Elimination of Market Share Incentive Plan

Also in its fiscal year 2004 fee changes, the Exchange extended its Market Share Incentive Plan through December 2003.⁷ The Exchange now proposes to discontinue this Plan, in order to allow the Exchange to develop other means to improve CBOE market share in 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁸ in general, and furthers the objectives of section 6(b)(4) of the Act⁹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to

section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder. 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.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-CBOE-2003-60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 CBOE. All submissions should refer to File No. CBOE-2003-60 and should be submitted by February 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on January 16, 2004, the date the CBOE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

¹³ 17 CFR 200.30-3(a)(12).

⁶ See Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003).

⁷ *Id.*

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).