

on August 23, 2002.² The BSE again amended the proposal on October 9, 2002.³ The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on October 29, 2002.⁴ The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of section 6 of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) of the Act⁷ in that it will provide a procedure whereby member organizations can be disciplined appropriately in those instances when a rule violation is minor in nature, but a sanction more serious than an admonition letter is appropriate. Additionally, the Commission finds the proposed rule change is consistent with the requirements of sections 6(b)(7)⁸ and 6(d)(1)⁹ of the Act. Section 6(b)(7) requires the rules of an exchange to be in accordance with the provisions of Section 6(d) of the Act, and, in general, to provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d)(1) requires an exchange to bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record, in any proceeding to determine whether a member or person associated with a member should be disciplined. Finally, the Commission finds the proposal is consistent with

Rule 19d-1(c)(2) under the Act,¹⁰ which governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the BSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-BSE-2002-04), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-1052 Filed 1-16-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47171; File No. SR-CBOE-2002-71]

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

January 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on December 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed

rule change as described in items I, II and III below, which items have been prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing with the Commission. 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 proposes to make a change to its fee schedule to reduce certain of its telecommunications fees.⁴ 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 Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. 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 to amend its Fee Schedule to reduce certain of its telecommunications fees effective January 1, 2003, due to its decision to defer a previously planned purchase of a new trading floor telephone system, for which these telecommunications rates had been raised by approximately 50% at the start of calendar year 2002 (this increase had previously been reduced by approximately 60% in May 2002). The new rates reduce the fees to a level approximately 10% higher than they were at the end of calendar year 2001, which will help offset increasing Exchange costs in this area. The

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ All telecommunications fees referred to herein are applicable only to members of the Exchange. Telephone conversation between Chris Hill, Attorney II, CBOE, and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Ian Patel, Attorney, Division of Market Regulation, Commission (January 9, 2003).

² See August 21, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change.

³ See October 8, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division, Commission ("Amendment No. 2"). In Amendment No. 2, the BSE added language to set a standard by which violations of certain provisions of the Plan will be determined.

⁴ See Securities Exchange Act Release No. 46705 (October 22, 2002), 67 FR 66029. The notice contained the text of the proposed rule change, as well as an explanation of the purpose for the proposed rule change.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(6).

⁸ 15 U.S.C. 78f(b)(7).

⁹ 15 U.S.C. 78f(d)(1).

¹⁰ 17 CFR 240.19d-1(c)(2).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.