

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.⁵ 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 DOT⁶ 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,⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁸ 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 Act⁹ and Rule 19b-4(f)(2) thereunder.¹⁰ 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.¹¹

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")¹ and Rule 19b-4 thereunder,² 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.³ 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*.⁴

* * * * *

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

⁵ 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).

⁶ 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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).