

participation on RAES, and the typical size of markets made by each party.

2. *Tenure in the trading crowd:*

"Tenure" refers to the length of time each party has spent in the trading crowd where the space in dispute is located.

3. *Association/affiliation with a member firm that has occupied the space:*

If a nominee or employee of a member firm has had to leave a space, then the Panel will consider to what extent there will be a negative impact on the trading in the crowd if another nominee of the member firm is or is not permitted to continue to use the space.

4. *Need for accommodation:*

The Panel will consider to what extent each party's existing business is already satisfied by their existing space or whether the new space is needed to facilitate either existing or anticipated new business.

5. *Proximity of competing parties:*

The Panel will give consideration to whether any party stood near the spot in question, or whether any party occupied the space in the past.

6. *Sight lines or Access:*

The Panel will consider to what extent each party needs sight lines or access to other parts of the crowd or the trading floor.

7. *Technology considerations:*

The Panel will consider to what extent each party's needs may be satisfied by trading technology or communication technology.

8. *Equitable considerations:*

In addition to the above factors, the Panel will consider any other factor it deems relevant in order to achieve a fair and equitable resolution.

(k) *Panel Decision.* The Panel Chairman shall communicate the Panel's decision to the Chairman and all parties to the dispute. The Panel decision shall take effect on the first trading day after all parties have been notified of the decision by the Panel Chairman. The Panel shall also promptly provide a written *Statement of Decision* explaining the reason(s) for its decision. However, the effective date of the Panel's decision shall not be postponed until the release of the *Statement of Decision*. If the Panel makes its decision about a party's right to use a space contingent upon that party's satisfaction of certain conditions, those conditions shall be set forth in the *Statement of Decision*.

(l) *Appeal.* Any party may appeal the decision of the Panel to the Appeals Committee pursuant to Chapter XIX of the Exchange Rules by filing an *Application* pursuant to CBOE Rule 19.2(a) within thirty days after the date

of release of the Panel's *Statement of Decision*. The Panel decision, however, shall remain in effect during any such appeal.

(m) *Failure to Comply.* Any member or person associated with a member who fails to comply with a decision reached through these *Crowd Space Dispute Resolution Procedures*, or who otherwise fails to comply with any provision of this CBOE Rule 24.21, may be subject to disciplinary proceedings in accordance with Chapter 17 of the CBOE Rules for violation of this rule and Rule 4.1 ("Just and Equitable Principles of Trade").

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FEE SCHEDULE

1. –15. Unchanged.

16. MISCELLANEOUS

Crowd Space Dispute Resolution Hearing Fee (per hearing, per member (10)): \$1,000

17–18. Unchanged.

MEMBER TRANSACTION FEE POLICIES AND REBATE PROGRAMS

Unchanged.

Footnotes

(1)–(9) Unchanged.

(10) *The Crowd Space Dispute Resolution Hearing Fee* is \$1,000 per hearing for each party to the dispute and will escalate under certain circumstances pursuant to CBOE Rule 24.21(e). After the hearing is held and all rights of appeal are exhausted, the prevailing party in the dispute shall obtain a refund of the *Hearing Fee* from the Exchange.

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

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule and discussed any comments it received on the proposed rule. 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

Background

CBOE proposes to adopt new CBOE Rule 24.21, which establishes guidelines

to resolve disputes concerning the right of Exchange members to occupy a certain space in an index option trading pit and procedures through which these disputes may be resolved. Over the past several years, an increase in the trading volume and the size of trading crowds for certain index options has created a lack of trading spots in certain trading pits. Up until this point, the Exchange has never adopted any formal policy about the right of members to occupy particular spaces on the trading floor. In the past, members have been able to resolve amicably disputes concerning the right to trade from a particular location in the pit. Also, the Exchange's SPX Floor Procedure Committee has been successful in mediating such disputes when they have occurred in the SPX trading crowd.

The Exchange believes it is appropriate at this time to adopt a rule to give the Chairman of the appropriate Floor Procedure Committee ("FPC") the authority to mediate, and if necessary, to convene hearing panels of members to resolve space disputes in index option trading crowds, and the Exchange the ability to enforce the results of any such mediation. Proposed CBOE Rule 24.21 shall apply only to members who trade OEX, SPX, DJX and DIA options on the floor of the Exchange, or who trade any other index option not located at a station shared with equity options as determined by the appropriate FPC.

Mediation by the FPC Chairman

The proposed rule provides that a member may seek the assistance of the Exchange to resolve a crowd space dispute and the Chairman of the appropriate FPC or his designee shall attempt to mediate an amicable resolution of the dispute among the members involved.³ The proposed rule also provides for immediate temporary resolutions of crowd space disputes pending the outcome of further proceedings under the rule.⁴ The proposed rule is designed to encourage amicable, mediated settlements, as opposed to hearings, by requiring mediation first by the FPC Chairman (or his designee) before members may resort to the hearing process provided for under the proposed rule.

Initiation of Hearings

In the event members cannot come to a resolution on the use of a trading space, a member may initiate a hearing by completing and submitting a *Hearing*

³ See paragraphs (a), (b), and (c) of proposed CBOE Rule 24.21.

⁴ See proposed CBOE Rule 24.21(d).