

Request form to the Office of the Secretary along with the payment of a Hearing Fee, which shall be a minimum of one thousand dollars (\$1,000) per member.⁵ The Exchange also proposes to amend the CBOE Fee Schedule to provide for a Crowd Space Dispute Resolution Hearing Fee of \$1,000. Hearing fees will escalate for those members who frequently use the hearing process to resolve such disputes, again with the purpose of encouraging amicable, mediated settlements. Repetitive, meritless claims involving the same parties are prohibited.⁶

Hearing Panel

The FPC Chairman shall select a Crowd Space Dispute Resolution Panel ("Panel") composed of seven Exchange members to hear and resolve the dispute.⁷ The Chairman shall select two members of the Panel from members of the Chairman's FPC (other than the Chairman himself), and four members of the Panel from members of the Exchange who are not members of the Chairman's FPC. Two of the latter four members of the Panel shall be members who trade in the trading station where the dispute has arisen and two shall be members who do not trade in the trading station where the dispute has arisen. In selecting the Panel members who are not members of the Chairman's FPC, preference will be given to members who serve on another Floor Procedure Committee or a Market Performance Committee. The seventh Panel member shall be the Chairman of the Floor Officials Committee, or another member of the Floor Officials Committee designated by the Chairman of the Floor Officials Committee. The Exchange's recusal rules and policies shall apply with respect to participation by the Chairman, Panel members, and others in the crowd space dispute resolution process under the proposed rule.⁸

Guidelines for Resolving Disputes

In resolving a crowd space dispute, the Panel's guiding principles shall be: (i) To determine what shall "best promote a liquid and competitive market", (ii) to give no preference to market-makers, floor brokers, or representatives of DPMs merely because of their status as such, and (iii) to recognize and apply the principles that no member has any ownership "rights" in any crowd space, and that no member

may sell or assign any supposed "right" to use a particular space in a trading crowd.⁹ The Panel will examine eight factors (set forth in proposed CBOE Rule 24.21(j)) and determine, in the Panel's sole judgment, how each relates to each of the parties competing for the space.

Procedures for Hearings

The hearing shall be held at such time and place as may be designated by the Panel. In hearings before the Panel, the Parties to the dispute will be allowed to present witnesses and/or documentary evidence to argue their claim. The legal counsel to the Chairman's Committee, or another attorney designated by the legal counsel to the Chairman's Committee, shall act as legal counsel to the Panel. The Panel shall determine all questions concerning admissibility of evidence, and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The Panel shall decide any issues of fact based on the evidence admitted at the hearing, and shall apply the Crowd Space Dispute Resolution Guidelines set forth in proposed CBOE Rule 24.21(j). The party receiving at least a majority vote by the Panel will prevail.¹⁰

The Panel Chairman shall communicate the Panel's decision to the Chairman of the Exchange 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.¹¹ Any party may appeal the decision of the Panel to the Appeals Committee pursuant to Chapter XIX of the Exchange Rules.¹² Any member or person associated with a member who fails to comply with a decision reached through proposed CBOE Rule 24.21, or who otherwise fails to comply with any provision of the proposed rule, may be subject to disciplinary proceedings.¹³

2. Statutory Basis

By establishing guidelines and procedures for the amicable resolution of pit space disputes, CBOE believes the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act,¹⁴ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and

open market, and 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 that is 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 changes.

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 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 CBOE. All submissions should refer to File No. SR-CBOE-2003-36 and should be submitted by November 21, 2003.

⁵ See proposed CBOE Rule 24.21(e).

⁶ See proposed CBOE Rule 24.21(f).

⁷ See proposed CBOE Rule 24.21(g).

⁸ See proposed CBOE Rule 24.21(h).

⁹ See proposed CBOE Rule 24.21(j).

¹⁰ See proposed CBOE Rule 24.21(i).

¹¹ See proposed CBOE Rule 24.21(k).

¹² See proposed CBOE Rule 24.21(l).

¹³ See proposed CBOE Rule 24.21(m).

¹⁴ 15 U.S.C. 78f(b)(5).