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Via Electronic Mail and Federal Express

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549

Re: Securities Exchange Act Release No. 34-49505 (File No. S7-18-04)

Dear Mr. Katz:

The Chicago Board Options Exchange, Incorporated ("Exchange") welcomes this opportunity to comment on File No. S7-18-04, the proposed rulemaking ("Proposal") by the Securities and Exchange Commission ("Commission") relating to rule changes proposed by self-regulatory organizations ("SROs").¹ In the Proposal, the Commission, among other things, proposes to revise Rule 19b-4 and Form 19b-4 under the Securities Exchange Act of 1934, as amended ("Act"), to require each SRO to (i) file rule filings electronically with the Commission, (ii) post rule filings on the SRO's website no later than the next business day after filing with the Commission, (iii) maintain a current and complete version of the SRO's rules on its public website, and (iv) update the SRO's public website to reflect rule changes no later than the next business day after the SRO has been notified of Commission approval.

The Exchange commends the Commission for seeking to streamline the procedures and reduce the costs associated with the SRO rule filing process. The Exchange also supports the Commission's initiative to make SRO rule filings more accessible to all SROs and interested persons. Although the Proposal takes a big step in the right direction, the Exchange believes that the Proposal needs to be improved in several areas. Accordingly, we urge the Commission to modify certain of the proposed rules as set forth in our letter before adopting them on a permanent basis.

I. Requirement to Submit Rule Filings Electronically

The Exchange supports the Commission's proposal to modernize the rule filing process by requiring SROs to file proposed rule changes electronically with the Commission. The Proposal will reduce the Exchange's expenses and preparation time involved in submitting rule filings to the Commission. Furthermore, it will provide more transparency in the rule filing process and will enable the public, SROs, and other market

¹ Securities Exchange Act Release No. 34-49505 (April 5, 2004).

participants to stay informed of developments among the SROs simply by accessing the SROs' public websites. There are a few aspects of this electronic filing requirement that we address individually.

First, the Exchange believes that SROs should maintain the ability to file paper copies with the Commission in limited circumstances. For example, an SRO may be unable to submit a rule filing electronically to the Commission because of SRO or Commission computer problems.² In those cases, the SRO should be able to submit the rule filing via facsimile, courier, or express mail service.

Second, with respect to the actual process for accessing the Commission's secure website, the Exchange believes the Proposal should be modified with respect to the placement of the electronic signature of a duly authorized officer on Page 1 of the initial screen. Specifically, proposed Form 19b-4(F) would require a duly authorized officer to sign Form 19b-4 manually and electronically. The Exchange believes this requirement is redundant in light of the requirement that SROs keep on file the manual signature page for a period of five years after filing. The Exchange requests that the signature requirements in the Proposal be revised to only require an SRO to obtain a manual signature from a duly authorized officer. This would permit the SRO employee that electronically submits the Form 19b-4 to the Commission to simply type the duly authorized officer's name with "/s/", for example, to indicate that the duly authorized officer signed a hardcopy version of Form 19b-4, which would be retained for the five-year period as set forth in the Proposal.

Lastly, the Exchange believes SRO attorneys should retain the ability to sign and submit letter amendments to SRO rule filings in those circumstances where a duly authorized officer delegates the authority to submit such amendments to staff attorneys. As described in the previous paragraph, the Proposal would permit only a duly authorized officer to manually and electronically sign Form 19b-4. Currently, Exchange duly authorized officers delegate authority to staff attorneys to sign and submit letter amendments to rule filings when those amendments are not a resubmission of the entire rule filing. The Exchange believes the current process works well in this regard, and the Exchange desires to retain the ability to have Exchange attorneys sign and submit letter amendments under the Proposal in the limited circumstances described above in order to retain one of the efficiencies of the current process.

II. Requirement to Post Rules on Website Immediately after Approval

The Exchange generally agrees with proposed Rule 19b-4(m), which requires SROs to post and maintain a current and complete version of its rules on its public website. Currently, the Exchange publishes its rules on a separate "legal" section of its public

² The Exchange seeks clarification with respect to rule filings submitted after 5:30 p.m. EST (for example, 6:00 p.m. EST). The Exchange understands proposed Rule 19b-4(l) of the Act to require posting of a proposed rule change no later than the next business day after the rule filing is deemed filed with the Commission. For example, the Exchange interprets Rule 19b-4(l) to require SROs to post rule filings submitted at 6:00 p.m. EST on June 22, 2004 on the SRO's public website no later than June 24, 2004.

website through a contractual arrangement with CCH, Incorporated ("CCH"), which is located at www.cboe.com/legal. The Exchange also promptly posts on the legal section of its public website rule changes that have been noticed and/or approved pursuant to Section 19(b)(2) of the Act and proposed rule changes filed pursuant to Section 19(b)(3) of the Act (collectively, "Rule Changes").³ In addition, the Exchange publishes a weekly bulletin for its members and other subscribers that contains the rule text set forth in the applicable Rule Changes.

However, the Exchange does not believe that the requirement in Rule 19b-4(m) that requires SROs to "post and maintain a current and complete version of [the SRO's] rules on its website" should be interpreted to mean that an SRO must update the rulebook itself on the SRO's website on the next business day after it has been notified of the Commission's approval⁴ of a proposed rule change filed pursuant to Section 19(b)(2) of the Act or of the Commission's notice of a proposed rule change filed pursuant to Section 19(b)(3) of the Act. CCH maintains the hardcopy and electronic rulebooks of most SROs, including the Exchange, and the process involved in ensuring the accuracy of the rule text provided in the SRO rulebooks in hardcopy and electronic form renders the "next business" day timeframe impractical to meet. The process involved in updating the Exchange rulebook is as follows: (i) the text of effective rule changes is submitted by the Exchange to CCH; (ii) CCH inputs the changes on its system and then sends initial proofs of the amended rule text back to the Exchange (the above processes are done in batches and not piecemeal for efficiency purposes, and it can take CCH up to a week to return draft updated rule text to the Exchange for review); (iii) Exchange employees conduct a face-to-face read-through of the rule text to correct errors (there are almost always at least a few corrections that must be made in this process); (iv) these edits to the changes are re-submitted to CCH; (v) CCH inputs these corrections and then re-submits a newly revised version of the rule changes back to the Exchange; and (vi) Exchange employees conduct a final read-through of the rule text to ensure that all errors have been corrected. This process, which is necessary to ensure that the Exchange rulebook is accurate at all times, takes longer than the next business day.

The Exchange submits that a more reasonable approach is to require SROs to post on their public websites rule filings that have been approved by the Commission pursuant to Section 19(b)(2) of the Act or the Commission's notice of a proposed rule change filed pursuant to Section 19(b)(3) of the Act on the next business day after the rule filing

³ <http://www.cboe.com/Legal/Rules/Index.asp>

⁴ The Exchange also requests that the Commission clarify that the phrase "notified of the Commission's approval" should mean the date that the rule filing is published in the Federal Register. In addition to the rule filing information published in the Commission's "News Digest" section on the Commission's website, Exchange staff is currently notified of effective Rule Changes via telephone, electronic mail, facsimile, and in some cases, no notification at all. Establishing the approval date as the date the filing is published in the Federal Register establishes a fixed and unambiguous date and also permits the Exchange to post the rule filing published in the Federal Register, which is provided in Adobe Portable Document Format, on the Exchange's public website.

approval or notice of immediate effectiveness has been published in the Federal Register.⁵ Since the Federal Register posts the rule filings in Adobe Portable Document Format ("PDF"), SROs can simply download the Adobe PDF rule filings located on the Federal Register website to their own public websites. In addition, the Exchange suggests that SROs be required to post on their public websites on the next business day after the applicable rule filing has been published in the Federal Register the actual rule text that is to go into effect and the date that the rule text is deemed effective, in the form of a separate Adobe PDF document for each rule filing.⁶ The rulebooks themselves provided on the SROs' public websites would be updated in due course according to the contractual arrangements with the appropriate parties, such as CCH.

Alternatively, if the Commission determines to establish a set timeframe for providing an updated rulebook on the SRO's public website, the Commission should recognize the limitations involved in updating SRO rulebooks and provide a more realistic timeframe, such as ten business days after publication in the Federal Register of rule filings that have been approved by the Commission pursuant to Section 19(b)(2) of the Act or the Commission's notice of a proposed rule change filed pursuant to Section 19(b)(3) of the Act.

III. Electronic Form 19b-4

The Proposal attaches screen shots of new electronic Form 19b-4 and a description of the information that will be required to be included in the completed form. The Exchange notes that Exhibit 2 and Exhibit 3 in proposed Form 19b-4 currently provide three "buttons" on the screen shot: "Add", "Remove", and "View". The Exchange suggests that a fourth button labeled "N/A" be added to reflect the circumstances in which an SRO would not file the documents provided in Exhibit 2 ("Notices, Written Comments, Transcripts, Other Communications") and Exhibit 3 ("Form, Report, or Questionnaire") because these exhibits are not applicable.

Additionally, the Exchange notes that SROs currently file one document with the Commission that contains all of the information required to be submitted in a Form 19b-4, including the exhibits required to be filed under Form 19b-4. The Exchange understands proposed Form 19b-4 to require the creation of separate documents, each of which contain separate sections of current Form 19b-4, to enable those sections to be uploaded to the electronic version of Form 19b-4. To ease the administrative burden of creating multiple documents for one rule filing, the Exchange requests that SROs be permitted to continue to submit one document that contains all of the information required be submitted in a current Form 19b-4.

⁵ The date of publication in the Federal Register provides the most objective reference point and timeframe. See *infra*, note 4.

⁶ The rule text of filings that do not have a waiting period for effectiveness, such as fee filings and rule filings for which the 30-day notice period have been waived, should be provided on the SROs' public website on the day the rule text is effective.

IV. Other Aspects of the Rule Filing Process

The Commission previously proposed changes to the SRO rule filing requirements in Securities Exchange Act Release No. 34-43860 (File Number S7-03-01) ("Release"). The Exchange's recommendations in its comment letter to the Release ("Letter") are just as apposite now as they were then.⁷ In particular, the Exchange continues to believe that rule filings submitted to the Commission should be published for public comment promptly, but no later than ten calendar days of filing. In addition, the Exchange requests that the Commission consider other types of rule changes that would be eligible to be filed under Section 19(b)(3) of the Act. Addressing these comments, in addition to the other comments above, will help the Commission accomplish its goal of expediting the SRO review process and would enable the Commission to concentrate its resources on the handful of filings each year that raise broad public interest issues.

V. Conclusion

For the reasons discussed above, we urge the Commission to modify the Proposal to address the issues raised in this letter. We appreciate the Commission's efforts to improve the efficiency of the SRO rule filing process and look forward to working with the Commission to accomplish its goals.

We are available to discuss any of the comments in this letter with the Commission or its staff. If we can be of assistance, please do not hesitate to contact me at 312-786-7462.

Sincerely,



Joanne Moffic-Silver

cc: Annette Nazareth
David Shillman
Elizabeth King
Florence Harmon

⁷ See Letter dated April 11, 2001 from Edward J. Joyce, Exchange President and Chief Operating Officer, to Jonathan G. Katz, regarding the Release.