

3. Comments by interested persons in these proceedings are due no later than January 15, 2009.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,
Secretary.

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POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009-14 and CP2009-20;
Order No. 164]

International Mail Contracts

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add International Business Reply Service (IBRS) to the Competitive Product List. The Postal Service has also filed a related contract. The notice invites public comment and addresses routine procedural matters. In addition, it directs several questions to the Postal Service.

DATES: Postal Service responses to questions identified in this notice are due January 12, 2009. Comments are due January 16, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 24, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add International Business Reply Service Contract 1 to the Competitive Product List.¹ The Postal

¹ Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, December 24, 2008 (Request). The Postal Service proposes to call this new product "International Business Reply Service Contracts." In this Notice, the Commission proposes to slightly alter that proposed name to "International Business Reply Service Contract 1" to provide for the possibility that more than one type of International Business Reply Service contract may exist in the future that is not functionally or substantially equivalent to the proposed Docket No. CP2009-20 contract. This may occur even though other future contracts may meet

Service asserts that the new International Business Reply Service Contract 1 product is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2009-14.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009-20.

Request. The Request incorporates (1) A statement of supporting justification as required by 39 CFR 3020.32, (2) a redacted version of the Governors' Decision authorizing the new product; (3) requested changes to the Mail Classification Schedule; and (4) a certification of compliance with 39 U.S.C. 3633(a).² Substantively, the Request seeks to add International Business Reply Service Contract 1 to the Competitive Product List. *Id.* at 1-2.

In the statement of supporting justification, Jo Ann Miller, Director, Global Business Development, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment 1. Thus, Ms. Miller contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Product description. As part of her statement of supporting justification, Ms. Miller describes the proposed product. She explains that IBRS contracts are for U.S.-based entities seeking a channel for returned merchandise or other articles from their

the parameters set by the Governors' Decision No. 08-24.

² Attachment 1 consists of a statement of supporting justification for this Request. Attachment 2 is the redacted Decision of the Governors of the United States Postal Service on Establishment of Prices and Classifications for International Business Reply Service (IBRS) Contracts (Governors' Decision No. 08-24). The Governors' Decision includes three attachments. Attachment A is proposed Mail Classification Schedule language. Attachment B is the price floor and price ceiling formulas approved by the Governors. Attachment C provides an analysis of the proposed price floor and price ceilings discussed in Attachment B. Attachment D is a certification as to the formulas for prices offered under applicable International Business Reply Service contracts. Attachment 3 is a redacted certification for the IBRS contract at issue in Docket No. CP2009-20. Unredacted copies of the Governors' Decision, the IBRS contract, the certification, and other supporting documentation establishing compliance with 39 CFR 3015.5 were filed separately with the Commission under seal.

overseas customers. Such entities typically supply preprinted, prepaid IBRS packaging in which their customers can place used or defective consumer items into the mailstream at no direct cost. The business entity compensates the Postal Service for this service, and the Postal Service remits to the relevant foreign postal administration the amount due for collection and transportation of the items in the foreign country. *Id.*, Attachment 1, section (d).

Related contracts. An unredacted version of the specific International Business Reply Service Contract 1 is included with the Request filed under seal. Unlike past practice, the entirety of the Docket No. CP2009-20 contract was filed under seal, and no redacted version was filed publicly. The Commission requests the Postal Service to explain why no portions of this contract can be filed publicly no later than January 12, 2009.

The contract is for 1 year from the date the Postal Service notifies the customer that all necessary approvals and reviews of the agreement have been obtained. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *See id.*, Attachment 1 and Attachment 3.

The Postal Service also explains that it has two ongoing similar arrangements with two customers whose prior contracts officially expired. These "contingency arrangements" survive the contracts' expiration and govern any residual items that third parties might continue to enter into the mailstream for return to the IBRS customers. The Postal Service states when the Docket No. CP2009-20 contract expires, this contingency arrangement will continue with respect to this contract partner until such time as a new IBRS contract can take effect after all necessary approvals and reviews. The Postal Service shall provide any and all IBRS contingency arrangements currently in effect no later than January 12, 2009. *See Request* at 3.

Confidentiality. The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific International Business Reply Service Contract 1, under seal. In its Request, the Postal Service maintains that the contract, related financial information, the customer's name, the accompanying analyses and certified statements that provide cost, prices, terms, conditions, and financial projections should remain under seal. *Id.* at 3-4. It notes that prices and other contract terms relating to parties' processes and procedures are confidential in the business world and

should be protected in accordance with industry standards. *Id.*

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–14 and CP2009–20 for consideration of the Request pertaining to the proposed International Business Reply Service Contract 1 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in these dockets.

Comments. Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. Comments are due no later than January 16, 2009. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

Pursuant to 39 CFR 1315.6, the Commission requests that the Postal Service address the following issues by January 12, 2009:

1. Ms. Miller's statement describing the product and why it should be classified as competitive, at least preliminarily, seems as though it could also apply to the domestic Merchandise Return Service product which is currently classified as market dominant. *See* Request, Attachment 1, section (d). Should this proposed product category be called "International Merchandise Return Service" to better align it with its domestic counterpart (Merchandise Return Service) and to avoid confusion with the market dominant product of the same name "International Business Reply Service"? *See* Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 at Appendix A, sections 1540 and 1505.10.

2. For the reasons set forth in Attachment 1, section (d), should a proceeding be initiated to consider moving the domestic Merchandise Return Service product to the competitive rate category? If not, please explain the processing and market characteristic differences between the proposed new product and Merchandise Return Service.

Other interested persons also may find it appropriate to address these issues in their comments.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–14 and CP2009–20 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings, including those addressing questions (1) and (2) of section II above, are due no later than January 16, 2009.

4. The Postal Service shall address questions (1) and (2) of section II above no later than January 12, 2009.

5. The Postal Service shall provide any and all IBRS contingency arrangements currently in effect no later than January 12, 2009.

6. The Postal Service shall explain why no portions of this contract can be filed publicly no later than January 12, 2009.

7. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Steven W. Williams,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59200; File No. SR–CBOE–2008–125]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Affiliations With Broker-Dealers

January 6, 2009.

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 15, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") 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 CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or

interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,³ and Rule 19b–4(f)(1)⁴ thereunder, 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 is seeking effectiveness of an interpretation of a CBOE Constitution provision related to affiliations with broker-dealers. The proposed rule change is available on CBOE's Web site (<http://www.cboe.org/legal>), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

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, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 is in the process of forming a wholly owned broker-dealer subsidiary. With respect to the contemplated establishment of the broker-dealer, the Exchange is seeking effectiveness of an interpretation of a CBOE Constitution provision related to affiliations with broker-dealers.

In particular, the Exchange notes that Article VIII, Section 8.1(b) of the CBOE Constitution provides in part that "[n]o officer, other than the Vice Chairman of the Board, shall be a member or affiliated with a member or a broker or dealer in securities or commodities."⁵

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b–4(f)(1).

⁵ The Exchange notes that this provision of the Constitution is proposed to be deleted as part of the Exchange's contemplated demutualization and, upon its deletion, there would no longer be such a restriction. *See* SR–CBOE–2008–88. The Exchange also notes that other self-regulatory organizations

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.