or indirect wholly-owned subsidiary, to any company (a ''Parent'') of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to Qualified Family Members of the Affiliated Co-Investor or a trust established for any Affiliated Co-Investor or any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; (e) when the securities are government securities as defined in section 2(a)(16) of the Act; (f) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities; or (g) when the Affiliated Co-Investor is an entity with respect to which BMO NB or any other entity within the BMO NB Group provides management, investment management or similar services as manager, investment manager, or general partner or in a similar capacity, if BMO NB or such entity does not have the actual investment discretion over the sale or disposition of the entity's securities.

4. Each Partnership and its General Partner and Investment Adviser will maintain and preserve, for the life of each such Partnership and at least two years thereafter, the accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners, and each annual report of such Partnership required to be sent to the Limited Partners, and agree that all such records will be subject to examination by the SEC and its staff.[4]

5. The General Partner will send or cause to be sent to each Limited Partner who had an interest in the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make or cause to be made a valuation of all of the assets of the Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, as soon as practicable after the end of each fiscal year of each Partnership, the General Partner of such Partnership will send or cause to be sent a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Limited Partners of federal and state income tax returns and a report of the investment activities of the Partnership during such year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a BMO NB Group director, officer, or employee, such individual will not participate in the Investment Adviser's determination of whether or not to effect the purchase or sale.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–6189 Filed 3–12–01; 8:45 am]

BILLING CODE 8010–01–M

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44043; File No. SR–CBOE–00–61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Change the Capitalization Transfer Fee Applicable to Designated Primary Market Makers

March 6, 2001

I. Introduction

On November 22, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding application of the fee for changes in ownership of Designated Primary Market Makers (''DPMs''). On December 4, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On December 13, 2000, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On January 10, 2001, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published in the **Federal Register** on January 22, 2001.[6] The Commission received 21 comment letters on the proposed rule change. Nineteen were submitted by DPMs, one by members of the CBOE Modified Trading System (''MTS'') Committee for the years 2000 and 2001, and one was submitted by a CBOE member.[7] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

In 1999, CBOE instituted a floor-wide DPM system and awarded the appointment of options classes to DPMs at no cost in exchange for a long-term commitment to the Exchange and a fee on subsequent changes of ownership (''transfer fee''). The transfer fee, contained in Interpretation and Policy .02 to CBOE Rule 8.89, is imposed on DPMs that undergo changes in their

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation (''Division''), SEC, dated December 1, 2000.

[4] *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Senior Special Counsel, Division, SEC, dated December 8, 2000.

[5] *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Senior Counsel, Division, SEC, dated December 28, 2000.

[6] *See* Securities Exchange Act Release No. 43839 (January 12, 2001), 66 FR 6715 (''Notice'').

[7] *See* letters to Jonathan G. Katz, Secretary, SEC, from Lawrence J. Blum, dated November 24, 2000; William O'Keefe, *et al*, members of the 2000 and 2001 MTS Committees, dated February 7, 2001; Daniel F. O'Neill and Peter J. Gancer, Managing Members, Midway Securities, LLC, dated February 9, 2001; Marc Brown, Brown Trading Group, dated February 8, 2001; Lee E. Tenzer, Chairman, Lee E. Tenzer Trading Company, dated February 9, 2001; Daniel Koutris, *et al,* Managing Members, KFT DPM, LLC, dated February 9, 2001; John Henkel, Managing Member, Midwest Partners, LLC, dated February 8, 2001; Michael G. Vitek, President, Botta Capital Management, LLC, dated February 12, 2001; Mark Wolicki, *et al,* RTB Derivatives, LLC, dated February 5, 2001; Bradley Griffith, Managing Member, Specialists DPM, LLC, dated February 8, 2001; Boris Furman, Managing Member, Furman Trading, LLC, dated February 9, 2001; David Barclay, General Counsel, LaRocque Trading Group, LLC, dated February 9, 2001; Ethan Schwartz, Managing Member, Schwartz Trading Group LLC, dated February 9, 2001; Keith Hoglund, *et al,* General Partners, Rathunas Trading, L.L.C., dated February 8, 2001; Joseph Feldman, Manager, Bridgeport DPM, LLC, received February 15, 2001; J. Monville Henige, President, O'Connor Specialists, LLC, on behalf of the members of O'Connor Specialists, LLC; Rathunas LLC, StoneHedge, Securities, LLC, TradeNet, LLC, Option Funding Group, LP, Prime Markets, LLC, Callahan DPM, LLC, Hiland Capital, LLC and O'Connor and Company, LLC, dated February 8, 2001. Copies of the comment letters are available in the Commission's Public Reference Room.

capitalizations during a determined five-year period.[8]

Currently, the transfer fee is assessed on those DPMs that have been allocated one or more options classes that have traded on the CBOE prior to June 29, 1999, so long as the allocation of the pre-June 29, 1999 options class was effected subsequent to June 29, 1999. The Exchange currently defines a change in capitalization broadly to include any sale, transfer, or assignment of any ownership interest in the DPM or any change in the DPM's capital structure, voting authority, or distribution of profits or losses.

The Exchange has proposed to modify the transfer fee to permit a DPM to add new capital, to make small changes in ownership or profit sharing, to replace a capital partner, or to merge with other DPMs (where all pre-existing partners continue their participation in the new DPM), without triggering the transfer fee. A transfer fee would, however, continue to be assessed in cases where a principal of a DPM exists or significantly reduces its participation in its DPM operation.

Accordingly, CBOE proposes to modify Interpretation .02 to its Rule 8.89 to allow the MTS Committee to analyze each proposed transaction to determine the transfer fee should be applied. To that end, a non-exhaustive list of factors to be considered in making the determination would be added to the Interpretation. The Exchange also proposes to change the existing formula contained in Interpretation .02(c) to CBOE Rule 8.89 for determining the amount of the transfer fee. The Exchange also proposes to amend section (f) of Rule 8.89 to allow the Exchange's Board of Directors, whether by appeal or on its own initiative, to review the application and amounts of transfer fees.

Finally, CBOE has proposed to make the effective date of this proposal retroactive to October 20, 2000, in order to avoid assessing the original transfer fee on the sole transaction that occurred since its inception.

III. Summary of Comments

The majority of the letters received by the Commission supported the proposed rule change.[9] All of the favorable or supporting commenters asserted that the proposed rule change would permit the Exchange greater flexibility in administering the fee, would allow DPMs to structure their businesses and bolster their capital without incurring fees, and would preserve the original purposes the fee was meant to serve. One commenter argued that the SEC should deny the Exchange's classification of the filing as effective upon filing.[10]

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

Pursuant to the proposed changes, the transfer fee would no longer be imposed automatically for all transfers of interest in a DPM. Rather, each transfer of interest would be reviewed by the MTS Committee, which would determine whether the transfer fee should be imposed. The MTS Committee is composed of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine members. By rule, the elected members must include specific numbers of DPMs, floor brokers and market makers.[13] The members of the MTS Committee are subject to the requirements of CBOE's recusal standards.[14] The MTS Committee would evaluate the transfer in light of the non-exhaustive list of factors proposed to be added to Interpretation .02 to CBOE Rule 8.89. The Commission believes that the MTS Committee's recusal standards and membership structure should protect the integrity and fairness of its decisions.

The Commission believes that these proposed changes should permit the Exchange more flexibility in the administration of the fee, while preserving its original purposes.[15] The Commission believes that the procedure for review by the MTS Committee should help to ensure the fee is applied only on those occasions necessary to preserve the interests originally identified by the Exchange, such as those instances where one or more principals in the DPM exit or significantly reduce their participation in the DPM operation, and not where DPMs only seek changes to their capital structure in their efforts to remain competitive. The factors enumerated in the Interpretation should provide appropriate guidance to the MTS Committee for this purpose.

The addition of procedures for review by the Board of Directors of the Exchange is also appropriate. Under the proposal, the Board of Directors could review the MTS Committee's decision as to whether to impose the fee, and the amount assessed. An aggrieved party, as described in Chapter XIX of the Exchange's rules, may request a review by the Board of Directors, or the Board on its own initiative may decide to review the MTS Committee's decision. The Commission finds that these changes are appropriate because they provide additional safeguards to ensure that the decisions of the MTS Committee are fair, equitable, and in accordance with the purposes of the transfer fee.

The Commission further finds that CBOE's proposed changes to the formula for assessing the amount of the fee are reasonable. These changes would, in general, serve to simplify the calculation of the fee, and reduce the amounts of any fees imposed. By setting forth a formula in its rules, the Exchange should be able to ensure that the transfer fee is calculated consistently and applied to all DPMs that are subject to the transfer fee in a reasonable manner. Therefore, the Commission believes that these changes to the formula are consistent with Section 6(b)(4) of the Act.[16] The Commission further notes that keeping the formula in the text of Interpretation .02 to Rule 8.89 should permit any DPM contemplating a change in its capital structure to ascertain what costs may be incurred, which the Commission believes is appropriate.

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[8] *See* Securities Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (order approving current transfer fee).

[9] *See* note 7 *supra.*

[10] *See* Blum letter, note 7 *supra.* The commenter's concern was addressed by the Exchange in Amendment No. 1, which re-classified the filing as submitted pursuant to Section 19(b)(2) of the Act, rather than Section 19(b)(3)(A) of the Act.

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* CBOE Rule 8.82.

[14] *See* CBOE Regulatory Circular RG 96–81 (September 12, 1996).

[15] According to the Exchange, the rule has three primary purposes: (1) to provide an incentive for DPMs to sufficiently capitalize their operations; (2) to recognize that DPMs receive allocations of options classes without paying any consideration, thus the fee is intended to discourage DPMs from profiting from their allocations by transferring interests in their operations; and (3) to assure the DPM has a long-term commitment to the Exchange.

[16] 15 U.S.C. 78f(b)(4).

The Exchange's proposal to make the new transfer fee effective as of October 20, 2000 is reasonable. According to the Exchange, if the proposal is not effective retroactively, only one change in capitalization would be subject to the current transfer fee. The Commission agrees that this result would be inequitable, and therefore believes that it is appropriate to make the new transfer fee effective as of October 20, 2000. In addition, this proposed change should promote uniformity of treatment for all evaluations of transfers of interest in DPMs.

The Commission believes that the rule, as amended, should preserve the original purposes of the transfer fee. Thus, the amended rule should still serve the CBOE's interest in securing long-term commitments to the Exchange, and thereby ensure the orderly and effective operation of the market. Further, the fee should still provide incentives of DPMs to maintain sufficient capital to operate as a DPM, thereby ensuring greater liquidity and investor protection. Finally, the amended transfer fee should serve to compensate the Exchange for the fee allocation of a business that was established by a person or entities other than the DPM when the DPM sells its interest to other parties.

V. Conclusion

For the foregoing reasons, the Commission finds that CBOE's proposal to change the capitalization transfer fee applicable to DPMs is consistent with the requirements of the Act and rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CBOE–00–61), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44037; File No. SR–ISE–01–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the International Securities Exchange LLC, Relating to Listing and Trading of Options on Exchange-Traded Fund

DATE: March 2, 2001.

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 March 2, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The same day, March 2, 2001, the ISE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rules 502, 503 and 504 to adopt listing and maintenance standards for options on Fund Shares (as defined below), as well as to permit the Exchange to trade options on Fund Shares in various exercise price increments. The text of the proposed rule change is available at the ISE or the Commission.

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 ISE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The ISE 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*

The purpose of the proposed rule change, as amended, is to provide for the trading of options on shares or other securities (''Fund Shares'') that represent interests in registered investment companies organized as open-end management investment companies, unit investment trusts or similar entities that are principally traded on a national securities exchange or through the facilieis of a national securities association and reported as ''national market'' securities, and that hold portfolios of securities comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities (''Funds''). Fund Shares are issued in exchange for an ''in kind'' deposit of a specified portfolio of securities, together with a cash payment, in minimum size aggregations or multiples thereof (''Creation Units''). The size of the applicable Creation Unit size aggregation is set forth in the Fund's prospectus, and varies from one series of Fund Shares to another, but generally is of substantial size (*e.g.,* value in excess of $450,000 per creation Unit). A fund, generally, will issue and sell Fund Shares in Creation Unit size through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Fund Shares and the appropriate securities are received. Following issuance, Fund Shares are traded on an exchange like other equity securities, and equity trading rules apply. Likewise, redemption of Fund Shares is made in Creation Unit size and ''in kind,'' with a portfolio of securities and cash exchange for the Fund Shares that have been tendered for redemption.

Generally, options on Fund Shares are proposed to be traded on the Exchange pursuant to the same rules and procedures that apply to trading in options on equity securities.[4] The position, exercise and reporting limits for options on Fund Shares would be the same as those established for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter to Heather Traeger, Special Counsel, Division of Market Regulation (''Division''), SEC, from Katherine Simmons, Vice President and Associate General Counsel, ISE, dated March 2, 2001 (''Amendment No. 1''). In Amendment No. 1, the ISE added proposed margin requirements for options on Fund Shares.

[4] Fund Shares are a type of security. The Exchange's proposed change to Rule 502, discussed infra, states: ''securities deemed appropriate for options trading shall include [Fund Shares].'' Accordingly, all of the Exchange's rules referring to ''securities'' would cover Fund Shares unless they were specifically excluded.