

more of the Investment Grade Ratings Criteria are not satisfied.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 04-4831 Filed 3-4-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49334; File No. SR-CBOE-2004-01]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule by the Chicago Board Options Exchange, Incorporated Relating to the UMA Calculation for the CBOE Hybrid System

February 27, 2004.

On January 8, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to allow the appropriate Index Floor Procedure Committee ("IFPC") to vary the component weightings of the Ultimate Matching Algorithm ("UMA") formula by product. On January 20, 2004, the Exchange submitted amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on January 28, 2004.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Exchange currently trades equity options on the CBOE Hybrid System ("Hybrid System")<sup>5</sup> and recently commenced trading of index options and ETF options on Hybrid.<sup>6</sup> The Exchange trades on Hybrid index

options and options on ETFs pursuant to the existing Hybrid rules applicable to equity options.

CBOE Rule 6.45A governs the priority and allocation of trades on the Hybrid System, and contains the UMA allocation model, which is a weighted formula that incorporates and blends the concepts of parity (Component A) and size prorata distribution (Component B). With respect to equity option trading, UMA currently assigns equal weighting percentages to Components A and B. Currently, all products under the jurisdiction of each floor procedure committee ("FPC") must utilize the same UMA weighting percentages (i.e., Components A and B must be weighted the same in all products under that FPC's jurisdiction). The Exchange proposes to permit the appropriate index FPC ("IFPC") to vary the weighting percentages of Components A and B by index or ETF option product.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act,<sup>7</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Commission believes that the proposal may allow for more competitive quoting, by permitting the IFPC to take into account disparate sized trading crowds trading the various index option or ETF option products. Further, the Commission believes that the proposed rule change may enhance competition to improve liquidity for that subset of such products that are generally less liquid.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2004-01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 04-4904 Filed 3-4-04; 8:45 am]

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Stephen Youhn, Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated January 20, 2004. In Amendment No. 1, CBOE replaced in its entirety the original proposed rule filing.

<sup>4</sup> See Securities Exchange Act Release No. 49108 (January 21, 2004), 69 FR 4187.

<sup>5</sup> The Hybrid System merges the electronic and open outcry trading models, offering CBOE market makers the ability to stream electronically their own market quotes. See Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) ("Hybrid Release").

<sup>6</sup> See Securities Exchange Act Release No. 48953 (December 18, 2003), 68 FR 75004 (December 29, 2003) (order approving SR-CBOE-2003-57).

<sup>7</sup> 15 U.S.C. 78f(b).  
<sup>8</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49341; File No. SR-CBOE-2004-08]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated To Establish a Fee Cap of \$75,000 Per Month for Member Firms on All Firm Proprietary and Firm Facilitation Trading in CBOE Products, To Reinstate the Prospective Fee Reduction Program, and To Credit DPM P/A Linkage Order Transaction Fees

March 1, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 2, 2004, 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 Exchange. On February 23, 2004, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, has been filed by the CBOE as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii)<sup>3</sup> of the Act and Rule 19b-4(f)(2)<sup>4</sup> 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, as amended, from interested persons.

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

The Exchange proposes to make several changes to its Fee Schedule to (1) establish a fee cap of \$75,000 per month for member firms on all firm proprietary and firm facilitation trading in CBOE products; (2) reestablish the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

Prospective Fee Reduction Program for February and March 2004; and (3) credit DPMs for transaction fees they incur in executing outbound "principal acting as agent" ("P/A") orders under the intermarket linkage program. The text of the proposed rule change is available at the CBOE and at 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 CBOE 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 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

**Fee Cap.** The purpose of the proposed rule change is to establish a monthly fee cap of \$75,000 per CBOE member organization<sup>5</sup> on all firm proprietary and firm facilitation trading across all CBOE products. CBOE stated that the fee cap in this proposal is functionally equivalent to File No. SR-Phlx-2003-61, which the Philadelphia Stock Exchange ("Phlx") submitted effective upon filing on August 29, 2003,<sup>6</sup> in which the Phlx established a monthly fee cap of \$50,000 for specified transaction charges by specified member organizations.

In addition, as the Phlx did in SR-Phlx-2003-61, the CBOE proposes to adopt a license fee of \$0.10 per contract side for transactions in all licensed products other than the S&P 100® Index

Options (OEX)<sup>7</sup> (collectively, the "licensed products") that will be imposed on transactions in these products by member organizations that reach the \$75,000 monthly fee cap described above. Thus, when a CBOE member organization exceeds the \$75,000 cap on the fees described above, the organization will be charged \$75,000 plus the license fee of \$0.10 per contract side for any transactions in licensed products in addition to those transactions that were included in reaching the \$75,000 level. In other words, the \$0.10 per contract side license fee is in addition to the proposed \$75,000 per month cap, if the cap is reached, on the products described above.

**Prospective Fee Reduction Program.** In recognition of high trading volume and positive financial results for the first six months of this fiscal year, the Exchange proposes to reimplement a Prospective Fee Reduction Program, as has previously been done.<sup>8</sup> Under the renewed program, CBOE Market-Makers (as defined in CBOE Rule 8.1) will have their transaction fees reduced from standard rates by \$.02 per contract side. In addition, the CBOE will reduce all floor brokerage fees by \$.003 per contract side. These reductions will be in effect for February and March 2004 only. During this time, the Exchange will continue to monitor its financial results to determine whether the Prospective Fee Reduction Program should be continued, modified, or eliminated.

**Credits to DPM for Fees Relating to Duplicate Linkage Transactions.** Under the intermarket Linkage, CBOE DPMs are required in certain circumstances to send a P/A order to another exchange, in order to obtain the National Best Bid or Offer ("NBBO") price for their customers. The DPM pays transaction fees to the other exchange as well as the OCC to execute this P/A order at the other exchange. Then, under the Linkage procedure, when the DPM receives a fill of its P/A order from the other exchange, the CBOE DPM must then retrade the order back to their customer, again resulting in transaction fees, this time from CBOE and the OCC. Thus, the Linkage procedure's requirement to retrade means that DPMs

who send such P/A orders to other exchanges incur duplicate transaction and Options Clearing Corporation ("OCC") fees on P/A orders that substantially increase the costs of such transactions for the DPMs. To help offset these additional costs, the Exchange proposes a two-phased relief. First, the CBOE proposes to rebate all CBOE transaction and trade match fees related to the orders that CBOE DPMs fulfill by sending P/A transactions to other exchanges (*i.e.*, the fees from the "retrade"). At current rates, this is \$0.24 per contract.

Second, in order to help offset the Linkage costs that the DPMs are assessed on P/A orders by the OCC and the other exchanges, the CBOE will credit CBOE DPMs an additional 50% of the CBOE transaction and trade match fees related to each outbound P/A transactions. At current rates, this is \$0.12 per contract. This second rebate will be funded by the amount of total transaction and trade match fees that CBOE receives from incoming P/A orders from other exchanges ("incoming P/A fees"), and the aggregate amount rebated in the second rebate will be limited to no more than the total amount of incoming P/A fees.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the 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 change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the

<sup>5</sup> This proposal applies to member organizations for orders for the proprietary account of any member or non-member broker dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations will be required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. As part of this proposal, this footnote will be included in the CBOE Fee Schedule.

<sup>6</sup> See Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003).

<sup>7</sup> Currently, the most actively traded option classes in this category include options on the S&P 500® Index (SPX), the NASDAQ 100® Index Tracking Stock™ (QQQ) the CBOE Mini-NDX Index (MNXS™), the Nasdaq-100® Index (NDX), the Dow Jones Industrial Average (DJX), DIAMONDS® (DIA), and the Russell 2000® Index (RUT).

<sup>8</sup> See *e.g.*, Securities Exchange Act Release No. 46266 (July 25, 2002), 67 FR 49969 (August 1, 2002).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder, because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-CBOE-2004-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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-2004-08 and should be submitted by March 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-4906 Filed 3-4-04; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49339; File No. SR-NASD-2003-196]

##### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Fees for Persons That Are Not NASD Members Using the Financial Information Exchange ("FIX") Protocol To Connect to Nasdaq**

February 27, 2004.

On December 29, 2003, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify fees for NASD members using the Financial Information Exchange ("FIX") protocol to connect to Nasdaq. The proposed rule change was published for comment in the **Federal Register** on January 23, 2004.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

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 association.<sup>4</sup> Specifically, the Commission believes that the proposed rule change is consistent with the provisions of section 15A<sup>5</sup> and 15A(b)(5) of the Act,<sup>6</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons

using any facility or system which the NASD operates or controls. Under the modified fee schedule, firms with existing FIX circuits may continue to use them at current prices, however Nasdaq will no longer offer non-Nasdaq members the option of using FIX through CTCI or FIX-only circuits.<sup>7</sup>

Nasdaq represents that FIX connectivity has not proved as popular among firms as has extranet connectivity. As stated above, while the proposed rule change will permit firms with FIX circuits to continue to use them at current prices, Nasdaq has represented that it believes the more economical extranet connectivity is likely to be the preferred method. The Commission therefore believes that the proposed rule change is likely to have a minimal impact on firms' connectivity to the Nasdaq, and further that the proposed rule change will not cause any disruption to firms currently using FIX connectivity.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NASD-2003-196) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SOCIAL SECURITY ADMINISTRATION

##### **Agency Information Collection Activities: Emergency Request, Proposed Request, Comment Request and Notice of OMB Approval**

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

<sup>7</sup> As of January 1, 2004, Nasdaq stopped offering new subscribers that are Nasdaq members the option of using FIX through CTCI or FIX-only circuits. See Securities Exchange Act Release No. 49092 (January 16, 2004), 69 FR 3408 (January 23, 2004).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 49091 (January 16, 2004), 69 FR 3407 (January 23, 2004).

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 15 U.S.C. 78(s)(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> See 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on February 23, 2004, the date the CBOE filed Amendment No. 1.