

with Section 6(b)(5) of the Act,⁷ which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the retroactive application of the SPEP pilot should allow the Exchange to continue to assess specialist performance without interruption, while allowing the Exchange adequate time to evaluate the program.

The Commission expects that, during the SPEP pilot, the Exchange will continue to monitor threshold levels and propose adjustments, as necessary, and continue to assess whether each SPEP measure is assigned an appropriate weight. In addition, the Exchange should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient and/or diverges widely from the best units will be subject to meaningful review.

The Commission finds good cause for granting the Exchange's request for a two-year extension of the SPEP pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.⁸ Among the obligations imposed upon specialists by the Exchange, and by the Act and rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange be able to evaluate specialist performance. The Exchange's SPEP pilot assists the Exchange in conducting its evaluation of specialist performance and accelerated approval of the proposed rule change would permit the SPEP pilot to continue on an uninterrupted basis. Therefore, the Commission believes good cause exists to approve the extension of the SPEP pilot from September 30, 2002 until September 30, 2004, on an accelerated basis. Accordingly, the Commission finds that granting accelerated approval of the requested extension is appropriate and

consistent with Sections 6(b)(5) and 19(b)(2) of the Act.⁹

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-BSE-2004-12), as amended is hereby approved on an accelerated basis until September 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49524; File No. SR-CBOE-2004-18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to an Extension of Its Prospective Fee Reduction Program

April 2, 2004.

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 26, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 CBOE. CBOE filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2)⁴ thereunder, as one establishing or changing a due, fee, or other charge imposed by the Exchange, 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 the Substance of the Proposed Rule Change

CBOE proposes to make a change to its Fee Schedule to extend the Prospective Fee Reduction Program

through the close of the current Exchange Fiscal Year on June 30, 2004.

Below is the text of the proposed rule change. Proposed new language is *italics*; proposed deletions are in [brackets].

* * * * *

FEE SCHEDULE—APRIL 1, 2004

1-18 No Change.

19 PROSPECTIVE FEE REDUCTION PROGRAM

A Prospective Fee Reduction Program will be in effect for February [and March] *through June 2004*. CBOE Market Maker (as defined in CBOE Rule 8.1) transaction fees will be reduced from standard rates by \$.02 per contract side. In addition, floor brokerage fees will be reduced by \$.003 (three-tenths of one cent) per contract side.

Remainder of Fee Schedule No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. 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

CBOE represents that in recognition of high trading volume and positive financial results to date during its current fiscal year, the Exchange recently re-implemented a Prospective Fee Reduction Program for February and March 2004.⁵ The Exchange now proposes to extend the current Prospective Fee Reduction Program through the close of the current CBOE fiscal year on June 30, 2004. Under the extended program, CBOE Market-Makers (as defined in CBOE Rule 8.1) will continue to have their transaction fees reduced from standard rates by \$.02 per contract side. In addition, under the extended program, CBOE will continue to reduce all floor brokerage fees by

⁵ See Securities Exchange Act Release No. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004).

⁷ 15 U.S.C. 78f(b)(5).

⁸ The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

\$.003 per contract side. As before, the Exchange will continue to monitor its financial results to determine whether the Prospective Fee Reduction Program should be continued, modified, or eliminated in the future.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE 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 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 proposal has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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. All comment letters should refer to File No. SR-CBOE-2004-18. The 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 Exchange. All submissions should refer to the File No. SR-CBOE-2004-18 and should be submitted by April 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49517; File No. SR-CHX-2004-01]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

April 1, 2004.

On January 21, 2004, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("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 to amend its membership dues and fees schedule (the "Fee Schedule") to clarify the applicability of certain Fee Schedule provisions relating to transaction fees, and to establish a schedule of maximum monthly transaction fees for certain agency orders executed through a CHX floor broker. The Exchange proposed to

apply the Fee Schedule changes on a retroactive basis effective as of November 1, 2003.³ On February 19, 2004, the Exchange submitted an amendment to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 1, 2004.⁵ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, particularly, Section 6(b)(4) of the Act, which requires that the rules of an exchange provides for the equitable allocation of reasonable dues, fees, and other charges among its members.⁷ The Commission believes that the Exchange's proposal to apply its current Fee Schedule on a retroactive basis to November 1, 2003, should allow the Exchange to provide eligible order-sending firms that route significant levels of order flow to the CHX a transaction fee credit. The Commission notes that the retroactive application of the proposal will not result in the assessment of any additional fees against CHX members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change, as amended, (SR-CHX-2004-01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-8085 Filed 4-8-04; 8:45 am]

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³ On December 31, 2003, the Exchange filed an identical amendment to the Fee Schedule, as immediately effective. See SR-CHX-2003-39. Because the Exchange also sought to apply the Fee Schedule amendments on a retroactive basis (*i.e.*, to the months November and December, 2003), the Exchange submitted the proposed rule change for notice and comment.

⁴ See facsimile from Ellen J. Neely, Senior Vice President & General Counsel, CHX, to A. Michael Pierson, Attorney, and Marisol Rubecindo, Law Clerk, Division of Market Regulation ("Division"), Commission, dated February 19, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the proposed rule change in its entirety.

⁵ See Securities Exchange Act Release No. 49298 (February 23, 2004), 69 FR 9660.

⁶ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 C.F.R. 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.