added, deleted, or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: July 29, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–19614 Filed 7–29–03; 11:41 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48223; File No. SR–CBOE–2003–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Its Fiscal Year 2004 Fee Schedule

July 24, 2003.

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 July 1, 2003, 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 CBOE filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder, in that the proposed rule change establishes or changes a due fee or other charge, which renders the proposal effective upon filing with the Commission. The CBOE filed via facsimile Amendment No. 1 on July 23, 2003.[5] 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 certain changes to its Fee Schedule for Fiscal Year 2004. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* July 23, 2003 letter from Chris Hill, Attorney, CBOE to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, CBOE removed one of the fee changes and made revisions to the Fee Schedule.

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, Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to make certain fee reductions, additions and changes. The proposed amendments are the product of the Exchange's annual budget review. The fee changes were approved by the Exchange Board of Directors pursuant to CBOE Rule 2.22 and will take effect on July 1, 2003. The Exchange proposes to amend the following fees.

(i) Index Order Book Official Execution Fee Reduction and Simplification

The Exchange proposes to significantly reduce and simplify the Index Customer Order Book Official Execution Fees (''Index OBO fees''). The Exchange represents that these are the rates charged when a floor broker or market maker buys or sells index option contracts out of the order book. Currently, there is a sliding scale of index OBO fee rates that change based on both the size of the order and the amount of the per-contract premium. The new per contract Index OBO fee rate will be flat rates (regardless of order size) of $.60 per book contract for book contracts with a premium greater than or equal to $2 and $.40 per contract for Book contracts with premiums less than $2.

As in prior years, OBO fees will continue to be waived for market orders sent to the book prior to the opening and executed during opening rotation. In the OEX option class, fees will continue to be waived for market and limit orders sent to the book prior to the opening and executed during opening rotation. Cabinet/accommodation/liquidation trades will continue to be charged $.10 per contract.

The Exchange estimates that the overall effect of the changes will be a reduction of approximately 33% in Index OBO fees.

(ii) Customer Large Trade Discounts

The Exchange proposes to establish a pilot program providing a customer large trade discount in the form of a cap on customer transaction fees, to be in effect for the period July through December 2003 for most CBOE index option products.[6] The Exchange determined the contract size at which the cap would be implemented after reviewing recent trading activity in each of the index products. Trade match and floor brokerage fees are not subject to the cap on fees.

Regular customer transaction fees will only be charged up to the following quantity of contracts per order, for the following underlying indexes:

1. Dow Jones indexes (including DIA)—charge only the first 7,500 contracts;
2. SPX—charge only the first 5,000 contracts;
3. OEX (including XEO and OEF), NDX and other indexes (not including MNX)—charge only the first 3,000 contracts.

(iii) Non-OCC Firm Booth Fees and Booth Rental Incentive Plan

The Exchange proposes to reduce monthly rental rates for most of the booths[7] that the Exchange leases to member organizations that are not members of the OCC (''non-OCC firms'') by $250, to a new rate of $300 per month. OCC member firms will continue to be assessed at $165 per month.

In an effort to increase booth space rentals, the Exchange will also establish a booth rental incentive plan that will be in effect for the period July 2003 through June 2004. Pursuant to this plan, all Members and Member Firms, both OCC and non-OCC, will be permitted to lease additional perimeter and Green Room booth space at a reduced rate of $100 per month per additional booth. The discounted price is only applicable to booths leased in excess of the quantity that the Member or Firm had been leasing as of June 1, 2003. For new Members and Member Firms, the first four booths will be assessed at the normal rate effective as of July 1, 2003, and any additional

[6] The MNX option class will not be included in this program since MNX customer fees were significantly reduced in June 2002 to a flat rate of $.15 per contract. *See* Securities Exchange Act Release No. 46045 (June 6, 2002), 67 FR 41284 (June 17, 2002) (noticing SR–CBOE–2002–28).

[7] Specifically, the reduced rates will apply to booths around the perimeter of the main 4th floor trading floor (''perimeter booths'') and those in the ''Green Room'' (the second floor trading area.) Booth rates will not change for those booths designated as OEX, OEX book, or Dow Jones/MNX booths.

booths in excess of the initial four will be assessed at the reduced lease rate during the incentive period. All booth fees discounted under the incentive plan will revert to regular rates on July 1, 2004.

(iv) Continuation of Market Share Incentive Program (MIP)

The MIP pilot program was initiated March 1, 2003.[8] The Exchange proposes to extend the program for an additional six-month period from July through December 2003. As set forth in the initial filing, the program will continue to reduce transaction fees for Market Makers and DPMs in the top 300 equities and QQQs if certain monthly market share targets or increases in market share in these option classes are achieved.

(v) Discontinuation of Prospective Fee Reduction Program

The Exchange proposes to discontinue the Prospective Fee Reduction Program (''PFRP'') for index option classes. The MIP Program previously replaced the PFRP for the equities and QQQ options classes, and the Exchange will similarly end the PFRP for index option classes in order to help fund various service enhancements for the index option classes.

(vi) Dow Jones Products Market Maker Transaction Fees

The Exchange proposes to increase market-maker transaction fees in Dow Jones option classes by $.10 per contract, to $.29 per contract, to partially recover the Exchange's costs to license Dow Jones products. This is consistent with similar fee surcharges that the Exchange has previously implemented to recover licensing costs for the MNX [9] and RUT [10] option classes.

(vii) RAES Access Fees for Non-Customer Orders

In March 2003, the Exchange implemented a pilot program temporarily suspending the $.30 per contract access fee for non-customer RAES orders in equity option classes through June 30, 2003.[11] The Exchange proposes to discontinue the pilot program, and reinstate the fee for equity option classes. The fee will also continue unchanged for non-equity option classes.

(viii) Data Lines Installation, Relocation and Removal

The Exchange has not changed its fees for these services since Fiscal Year 1993. The Exchange proposes to increase fees in this area to fully recover labor costs associated with this service. The new fees will be as follows:

1. Installation for (i) Lines from local carrier to trading floor and (ii) lines between Communications Center and trading floor will increase from $263 to $350;
2. Installation between local carrier and Communications Center will increase from $158 to $200;
3. Relocation on the trading floor will increase from $315 to $425;
4. Removal of (i) Lines from local carrier to trading floor and (ii) lines between Communications Center and trading floor will increase from $158 to $200;
5. Removal of lines between local carrier and Communications Center—will increase from $79 to $100.

(ix) Russell 2000 DPM Supplemental Transaction Fee

Due to the fact that the DPM in the Russell 2000 has been paying a significant periodic fee to CBOE to recover the Exchange's additional costs to license the product,[12] the Exchange has determined that it no longer needs to also impose the $.16 per contract fee charged to the DPM for each Russell 2000 DPM contract.[13] The Exchange therefore proposes to eliminate the $.16 per contract fee.

(x) Floor Broker Workstation (FBW)

The Exchange proposes to charge a monthly fee of $425 to place a new FBW functionality on desktop terminals, equal to the rate currently assessed for ILX devices. If the application resides on a workstation that has the ILX, TNT (both proprietary terminal functionalities) and FBW functionalities, an additional $100 fee will be assessed. Mobile FBWs will not be assessed a fee at this time in order to encourage their greater usage.

(xi) Pass Through of Additional NASD Fingerprinting Fee

On August 2, 2002, the Exchange entered into a Memorandum of Understanding with the NASD, whereby the registration of associated persons of CBOE member organizations would be processed through Web CRD.[14] This process includes the fingerprinting of associated persons. The NASD has informed the Exchange that beginning on July 14, 2003, it intends to assess a new fee of $13 for the processing of fingerprint results submitted by members or member firms on behalf of their associated persons who have had their prints processed through a self-regulatory organization other than the NASD. The NASD will be applying this fee equally to all self-regulatory organizations, and will retain the fee proceeds.

The Exchange proposes to pass these costs through to the appropriate member firms. Specifically, CBOE member firms would be charged an additional $13 for each associated person that is fingerprinted directly through a self regulatory organization other than NASD (for instance, CBOE). CBOE notes that the NASD intends to raise its fee from $10 to $13 for CBOE members that are fingerprinted directly by the NASD.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[15] of the Act, in general, and furthers the objectives of section 6(b)(4)[16] of the Act 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.

[8] *See* Securities Exchange Act Release No. 47508 (March 14, 2003), 68 FR 13972 (March 21, 2003) (noticing SR–CBOE–2003–06).

[9] *See* Securities Exchange Act Release No. 43226 (August 29, 2000), 65 FR 54332 (September 7, 2000) (noticing SR–CBOE–2000–33).

[10] *See* Securities Exchange Act Release Nos. 47169 (January 13, 2003), 68 FR 2596 (January 17, 2003) (noticing SR–CBOE–2002–73) and 47170 (January 13, 2003), 68 FR 2595 (January 17, 2003) (noticing SR–CBOE–2002–72).

[11] *See* Securities Exchange Act Release No. 47559 (March 21, 2003), 68 FR 15252 (March 28, 2003) (noticing SR–CBOE–2003–10).

[12] *See* Securities Exchange Act Release No. 47169 (January 13, 2003), 68 FR 2596 (January 17, 2003) (noticing SR–CBOE–2002–73).

[13] *See* Securities Exchange Act Release No. 47170 (January 13, 2003), 68 FR 2595 (January 17, 2003) (noticing SR–CBOE–2002–72).

[14] *See* Securities Exchange Act Release No. 46062 (June 11, 2002), 67 FR 41552 (June 18, 2002) (noticing SR–CBOE–2001–66).

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

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

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act[17] and subparagraph (f)(2) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of the 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.[19]

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. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number SR–CBOE–2003–26 and should be submitted by August 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–19473 Filed 7–30–03; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on July 23, 2003, the date the CBOE filed Amendment No. 1.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48227; File No. SR–NASD–2003–74]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Regarding the Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties

July 25, 2003.

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 April 16, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On June 17, 2003, NASD submitted Amendment No. 1 to the proposed rule change.[3] On July 9, 2003, NASD submitted Amendment No. 2 to the proposed rule change.[4] 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

NASD is proposing to amend NASD Rules 3130, 3131 and the Rule 9410 Series to expand NASD's authority to take expedited action against all member firms with capital deficiencies and to permit NASD to suspend a member that operates for any period of time with inadequate net capital. In addition, NASD proposes to delete subparagraph (g) of NASD Rule 9160 because the Department of Member Regulation staff does not participate as an adjudicator in a Rule 9410 decision.

The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].[5]

* * * * *

3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties

(a) Application—For the purposes of this Rule, the term ''member'' shall be limited to any *NASD* member [of the Association who] *that* is not designated to another self-regulatory organization by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d-1 thereunder. Further, the term shall not be applicable to any member [who] *that* is [subject to paragraphs (a)(2)(iv), (a)(2)(v) or (a)(2)(vi) of SEC Rule 15c3–1, or is otherwise exempt from the provisions of said rule or is] subject to Rule 3131.

(b) Each member subject to SEC Rule 15c3–1 shall comply with the net capital requirements prescribed therein and with the provisions of this Rule.

[(b)]*(c)* A member, when so directed by [the Association] *NASD,* shall not expand its business during any period in which:

(1) Any of the following conditions continue to exist, or have existed, for more than 15 consecutive business days:

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

[2] 17 CFR 240.19b-4.

[3] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 17, 2003 (''Amendment No. 1''). In Amendment No. 1, NASD proposed the following changes: (i) to revise NASD Rules 3130(e) and 3131(e) to state that the Department of Member Regulation may issue a notice to members that are not in compliance with applicable net capital requirements set forth in SEC Rule 15c3–1 or Section 402.2 of the rules of the Treasury Department, as applicable, directing such member to suspend all business operations, but that the obligation to suspend all business operations arises from the SEC Rule 15c3–1 or Section 402.2 of the rules of the Treasury Department, as applicable, and not from the notice issued by the Department of Member Regulation; (ii) to add new Rules 3130(f) and 3131(f) to provide that any notice directing a member to limit or suspend its business operations will be issued by the Department of Member Regulation pursuant to Rule 9412; and (iii) to make certain non-substantive technical changes to correct the rule language and the markings indicating changes thereto.

[4] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated July 8, 2003 (''Amendment No. 2''). In Amendment No. 2, NASD proposed the following changes: (i) to revise NASD Rule 9412 to delete a reference to the Department of Member Regulation; (ii) to change a reference in NASD Rule 9415(d); and (iii) to delete subparagraph (g) of NASD Rule 9160. The Commission notes that Amendment No. 2 contains a typographical error with regards to the reference to NASD Rule 9515(k)(2) in the letter. The reference should be to NASD Rule 9413(k)(2), as set forth in the proposed rule text. The Commission notes further that in Amendment No. 2, NASD incorrectly states that it is amending NASD Rule 9412. Amendment No. 2 makes no additional changes to NASD Rule 9412. Telephone conversation between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Ann E. Leddy, Attorney, Division, Commission (July 21, 2003).

[5] The Commission has included proposed rule language set forth in the original filing that NASD inadvertently omitted from Amendment No. 2. Telephone conversation between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Ann E. Leddy, Attorney, Division, Commission (July 17, 2003).