

### 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)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2) thereunder.<sup>12</sup> At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate this 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 the furtherance of the purposes the Act.

### IV. Solicitation of Comments

The Commission has frequently raised serious concerns about payment for order flow and internalization.<sup>13</sup> Payment for order flow is of concern because brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe their customers to find the best execution available. While payment for order flow has been a common practice in the equities markets for some time, only recently has payment for order flow developed in the options markets. Despite these concerns, however, the Amex's proposal involves the imposition of a fee and the Act gives exchanges wide latitude to establish, revise, and collect fees and other charges without prior Commission approval. The Commission invites interested persons to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. In particular, the Commission asks persons who submit comments whether the payment for order flow facilitated by the Amex's proposal raises greater or different concerns than payment for order flow at other option exchanges. After receiving comments, and at any time within 60 days from the date the Amex filed its proposal, the Commission can decide to require the Amex to stop collecting the fee, refile

the proposal, and await Commission approval before reinstating the fee.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-AMEX-00-38 and should be submitted by September 28, 2000.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43226; File No. SR-CBOE-00-33]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending the Exchange's Fee Schedule To Impose a Fee on the Designated Primary Market-Maker for Transacting in Options on the CBOE Mini-NDX Index for Its Proprietary Account

August 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 31, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 proposes to amend its fee schedule to require the Designated Primary Market-Maker ("DPM"), who transacts options on the reduced-value of the Nasdaq-100 Index ("MNS<sup>SM</sup>") for its proprietary account, to pay a new exchange fee of \$0.25 per contract.<sup>2</sup> The text of the proposed rule change may be examined at the places specified in Item IV below.

#### 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. 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 aspects of such statements.

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

###### 1. Purpose

On July 10, 2000, the Commission approved the listing and trading by the CBOE of the MNX product.<sup>3</sup> The purpose of the proposed rule change is to require the DPM, who trade the MNX product for its proprietary account, to pay a new exchange fee of \$0.25 per contract.

Currently, all DPMs are charged \$0.19 per contract for transactions for their proprietary accounts. The Exchange proposes that the DPM trading the MNX product be charged an additional fee of \$0.25 per contract, totaling \$0.44 per contract. This new fee would be used to assist the Exchange in offsetting some of the royalty fees that the Exchange must pay to the Nasdaq Stock market ("Nasdaq") for permission to trade the MNX product.

The Exchange believes that this new fee is reasonable and justified because the DPM for the MNX product has been awarded special status for the product (*i.e.*, the DPM status) and thus, stands to

<sup>2</sup> The CBOE started trading the MNX product on August 14, 2000. The reduced-value of the Nasdaq-100 index is equal to one-tenth of the current value of the Nasdaq-100 index. See Securities Exchange Act Release No. 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (SR-CBOE-00-15).

<sup>3</sup> *Id.*

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

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

<sup>13</sup> See Securities Exchange Act Release No. 43177 (August 18, 2000), 65 FR 51889 (Aug. 25, 2000); Securities Exchange Act Release No. 43112 (Aug. 3, 2000), 65 FR 49040 (Aug. 10, 2000); Securities Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577 (Feb. 28, 2000); Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006 (Nov. 2, 1994). See also Securities Exchange Act Release No. 43084 (July 28, 2000).

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

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

gain the most by the CBOE listing the product. In addition, all DPM applicants for the MNX product submitted their applications with full knowledge that the Exchange intended to impose a fee on the DPM who is selected to trade this product for its proprietary account.<sup>4</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> 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 inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, and, therefore has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder.<sup>8</sup> 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.

## 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

<sup>4</sup> The Exchange informed the membership of the anticipated DPM fee in an Information Circular, IC00-63 (June 28, 2000), which solicited DPM applicants for trading the MNX product. Telephone conversation between Jaime Galvin, Counsel, CBOE, and Hong-anh Tran, Attorney, Division of Market Regulation ("Division"), Commission (August 4, 2000).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 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 the File No. SR-CBOE-00-33 and should be submitted by September 28, 2000.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43221; File No. SR-CBOE-00-39]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending the Exchange's Fee Schedule**

August 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 31, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 proposes to amend its fee schedule to waive all customer fees for option transactions based on the

reduced-value of the Nasdaq-100 Index ("MNX<sup>SM</sup>").<sup>2</sup> The text of the proposed rule change may be examined in the places specified in Item IV below.

#### **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. 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 aspects of such statements.

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

###### 1. Purpose

On July 10, 2000, the Commission approved the listing and trading by the CBOE of the MNX product.<sup>3</sup> The purpose of the proposed rule change is to waive all customer fees relating to public customer MNX options orders. These fee waivers will be in effect beginning with the launch of trading of the MNX product on August 14, 2000.

Specifically, the Exchange proposes to waive the transaction fee, trade match fee, floor brokerage fee and the retail automatic execution system ("RAES") fee for public customer MNX options orders. The Exchange has decided to waive these fees to promote the launch of the MNX product, and may determine to reevaluate the fee waiver at a future time. The Exchange believes these fee waivers will serve to make MNX options competitive with competing products at other exchanges while generating significant savings for its customers.

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

<sup>2</sup> The CBOE started trading the MNX product on August 14, 2000. The reduced-value of the Nasdaq-100 index is equal to one-tenth of the current value of the Nasdaq-100 index. See Securities Exchange Act Release No. 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (SR-CBOE-00-15).

<sup>3</sup> *Id.*

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

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