

The Exchange therefore proposes to establish a policy whereby it will pass any periodic license or royalty fees through the DPM allocated to a security for which the Exchange pays such fees. This policy, which would be memorialized in the Exchange fee schedule under "Miscellaneous Fees," would apply to any securities traded on the Exchange, whether a listed security or a security traded pursuant to unlisted trading privileges, that are allocated to a DPM and for which the Exchange pays a periodic license or royalty fee to authorize trading at the Exchange, including options, structured products, exchange-traded funds ("ETFs") based on a stock index,⁵ and Trust Issued Receipts ("TIRs") (as described in Interpretation .04 to CBOE Rule 1.1). At the present time, the Exchange does not foresee any periodic license or royalty fees being imposed upon products that are not allocated to a DPM. If and when that occurs, however, the Exchange would address it by submitting to the Commission a separate proposed rule change that, like this one, would treat all such similarly situated products in the same manner.

The Exchange represents that any fee passed through to the DPM pursuant to this filing will reflect only the actual costs incurred by the Exchange for a periodic license or royalty fee in connection with Exchange trading of the security allocated to the DPM, and which are not otherwise offset by any other fees imposed by the Exchange. The Exchange also represents that it will inform any applicants for the DPM position in such products that they will have the periodic license or royalty fee passed through to them if they are awarded the DPM position for that product, and that this periodic pass through may be separate from any additional per contract license or royalty fee that may also be charged to the DPM and/or other market participants in connection with the trading of such product.

The Exchange believes this fee is reasonable and justified because DPMs for products with a periodic license or royalty fee have been awarded special status for the product (*i.e.* the DPM status) and thus, stand to gain the most from continued CBOE listing of the product, which will be dependent upon the payment of the periodic license or royalty fee. It also is more logistically workable to pass a periodic fee through to the single DPM entity, which

⁵ For ease of reference, this rule filing uses the term ETF to describe both Index Portfolio Receipts ("IPRs"), as described in Interpretation .02 to CBOE Rule 1.1, and Index Portfolio Shares ("IPs") as described in Interpretation .03 to CBOE Rule 1.1.

consistently participates in a substantial percentage of the trading in such products, rather than attempting to identify and assess all the other market participants in such trading, which can vary in identity and the extent of their participation in such trading over time.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁶ 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 that is 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

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 and subparagraph (f) of Rule 19b-4 thereunder. 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 proposal 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

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 CBOE. All submissions should refer to file number SR-CBOE-2002-73 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47163; File No. SR-CHX-2002-39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice hereby is given that on December 30, 2002, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the CHX has prepared. 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 CHX proposes to amend its membership dues and fees schedule effective through December 31, 2003, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria, described below. The text of the proposed rule change is available at the CHX and at the Commission.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

Purpose

The proposed change to the CHX fee schedule would provide for continued assessment of a marketing fee, in an amount equal to \$.01 per share, applicable to transactions occurring on or before December 31, 2003. The marketing fee would apply only to "Subject Transactions"³ in "Subject Issues"⁴ and would not be assessed if the specialist trading the Subject Issue elected to forego collection of the marketing fee.

The CHX currently assesses a marketing fee under a provision of the CHX fee schedule that, by its terms, expires on December 31, 2002.⁵ Under the system currently in place, the CHX calculates, bills, and collects the marketing fee and remits the proceeds to

³ "Subject Transaction" means (a) any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the CHX via the MAX system or where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

⁴ "Subject Issue" means any issue which constitutes an exchange-traded fund and meets the following two criteria: (a) average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

⁵ See Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR-CHX-2001-10) (announcing immediate effectiveness of the new marketing fee provision to the CHX fee schedule through December 31, 2001); Securities Exchange Act Release No. 45282 (January 15, 2002), 67 FR 3517 (January 24, 2002) (SR-CHX-2001-30) (extending program through June 30, 2002); Securities Exchange Act Release No. 46233 (July 19, 2002), 67 FR 48960 (July 26, 2002) (SR-CHX-2002-19) (extending program through July 31, 2002); and Securities Exchange Act Release No. 46297 (August 1, 2002) 67 FR 51612 (August 8, 2002) (SR-CHX-2002-25) (extending program through December 31, 2002).

the specialist firm trading the Subject Issue. The specialist firm then distributes the funds to order-sending firms in accordance with its payment-for-order flow arrangements relating to the Subject Issue (and possibly also to market makers who contribute to market share growth in certain instances).⁶ The remaining undistributed funds in excess of \$1000 are refunded, on a quarterly basis, to the paying parties pro rata, in proportion to the fees they have paid.

The CHX notes that the proposed marketing fee provision does not differ from the previous versions, except that it would extend application of the marketing fee through December 31, 2003. The CHX intends that the continued imposition of the marketing fee will allocate equitably the financial burden of seeking order flow for Subject Issues. According to the CHX, in the absence of the marketing fee the CHX specialist trading a Subject Issue is the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as the licensing fees that the licensor of the product imposes.⁷ CHX market makers participating in transactions in Subject Issues, conversely, do not currently share any of these costs. The proposed rule change would allow a specialist trading a Subject Issue to elect or decline imposition of the marketing fee depending on whether the specialist believes it is appropriate for a part of the financial burden of trading the Subject Issue to be allocated among those trading the Subject Issue. The CHX anticipates that the proposed rule change will continue to provide specialists trading Subject Issues with sufficient incentive to continue their efforts to attract additional order flow and increase market share.

Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b)(4) of the Act⁸ in that it provides for the equitable allocation of reasonable

⁶ See Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR-CHX-2001-10) (describing potential arrangements between specialists and market makers). According to the CHX, no such arrangements are currently in place. Conversation between Kathleen M. Boege, Associate General Counsel, CHX, and Gail Fortson, Paralegal Specialist, Division of Market Regulation, Commission, on January 10, 2003.

⁷ The CHX's marketing fee program applies only to exchange-traded fund products, which virtually always have an associated licensing fee. Currently, the marketing fee is assessed only against the Nasdaq-100 Index exchange-traded fund, commonly known as "QQQ."

⁸ 15 U.S.C. 78f(b)(4).

dues, fees and other charges among its members.

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

The CHX believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The CHX has not received any written comments with respect to the proposed extension of the marketing fee program.

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 CHX charge and therefore has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(2) thereunder.¹⁰ At any time within 60 days after the filing of the rule change, the Commission may summarily abrogate the 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. 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 at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 19b-4(f)(2).

SR-CHX-2002-39 and should be submitted by February 7, 2003.

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. 34-47175; File No. SR-CHX-2002-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on December 23, 2002, the Chicago Stock Exchange, Inc. ("Exchange" or "CHX") submitted to 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 the CHX. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing with the SEC.⁴ 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 CHX proposes to amend its membership dues and fees schedule (the "Schedule"), effective January 1, 2003, to: (1) Increase membership dues from \$5,000 to \$6,000 per year; (2) eliminate the fee relating to member firm branch offices; (3) extend the OTC Fixed Fee Charge, Listed Specialist Credit Reduction Charge and Floor Broker Credit Reduction Charge; (4) increase the monthly caps on transaction fees on orders sent through the Exchange's MAX® system; (5) add a new

processing fee for certain transactions in OTC securities; and (6) revise references to certain Nasdaq charges and make other clarifying changes.

The text of the proposed rule change is below. Proposed additions are in *italics* and proposed deletions are in [brackets].

Membership Dues and Fees

* * * * *

A. Membership Dues and Transfer Fees

All members: Effective [April 1, 2000] *January 1, 2003*, [\$5,000] *\$6,000* per year, payable monthly in equal installments.

Transfer of memberships: No change to text.

B. Self-Regulatory Organization Fee

No change to text.

C. Registration Fees

Firm or Corporation: No change to text.

[Office (other than principal)]:

[\$25 per year (up to a maximum of 1,500 offices each year) and \$25 for each additional registration during the year.]

Off-Floor Traders: No change to text.

Clerks: No change to text.

Registration Processing Fees: No change to text.

D. Specialist Assignment Fees

No change to text.

E. Specialist Fixed Fees

Except in the case of Exemption Eligible Securities (as defined above in Section D), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

Fixed Fee Per Dual Trading System Security = No change to text.

Fixed Fee For Specialist Firms Trading Nasdaq/NMS Securities =

The lowest monthly fixed fee charged each member firm for the period from January through June 2002, less the market data rebate earned by the firm in June, 2002. [(Effective July 2002)].

[For each month from September 2002 through December 2002,] E[each specialist firm shall be charged a Fixed Fee Charge equal to that specialist firm's pro rata share of an additional \$10,000 monthly fee. A specialist firm's pro rata share shall be based on the firm's percentage participation in the total market data rebates paid to specialist firms trading Nasdaq/NMS Securities in

June 2002.

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F. Transactions and Order Processing Fees

1. SEC Transaction Fees: No change to text.

2. NASD Fees on Cleared Transactions: No change to text.

3. Order Processing Fees: No change to text.

4. Transaction Fees:

a. to g: No change to text.

h. Effective January 1, [2001] *2003*, monthly maximums for fees:

(1) Maximum monthly transaction fees [\$7,000] *\$10,000* for orders sent via MAX

(2) Maximum monthly transaction fee \$110,000 for transactions in NASDAQ/NMS Securities (*other than transactions included in (1) above*)

(3) Maximum monthly transaction fee \$110,000 for transactions in Dual Trading System Securities (*other than transactions included in (1) above*)

(4) Maximum monthly transaction fees shall not exceed the lesser of that specified in (1), (2) or (3) above, or \$.40 per 100 average monthly gross round lot shares.

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H. Equipment, Information Services and Technology Charges

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Telephone Charges: No change to text.

[Tools of the Trade Access]

[Each specialist firm shall be billed on a monthly basis, based on usage by each of the firm's OTC/UTP co-specialists, for actual Tools of the Trade access charges that become due in accordance with the Exchange's license agreement with Financial Systemware, Inc.]

[Tools of the Trade Connection Charges]

[All Tools of the Trade Connection Charges (*i.e.*, the costs of providing access to and use of the Exchange's Tools of the Trade server to facilitate OTC/UTP trading) shall be allocated pro rata on a monthly basis among all specialist firms that use Tools of the Trade in OTC/UTP trading, based on the number of OTC/UTP co-specialists at each firm using Tools of the Trade software.]

Server and Network Infrastructure: All Server and Network Infrastructure.

Charges; Nasdaq Connection Charges; and all Nasdaq Connection Charges (*i.e.*, the costs of providing access to and use of the Exchange's Nasdaq servers to facilitate OTC/UTP

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 The proposal affects only fees and charges assessed to members. Telephone conversation between Ellen Neely, General Counsel, CHX and Tim Fox, Attorney, Division of Market Regulation, Commission, January 9, 2003.