

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.

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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")¹ and Rule 19b-4 thereunder,² 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.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on January 28, 2004.⁴ 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")⁵ and recently commenced trading of index options and ETF options on Hybrid.⁶ 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,⁷ and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,⁹ 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,¹⁰ 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.¹¹

Margaret H. McFarland,

Deputy Secretary.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

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

⁵ 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").

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

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

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 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")¹, and Rule 19b-4 thereunder,² 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)³ of the Act and Rule 19b-4(f)(2)⁴ 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

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).