

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50063; File No. SR-CBOE-2004-49]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Allow the Exchange To List Up To Seven Expiration Months for Certain Index Options up Until the Expiration of Those Options in November 2004

July 22, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 22, 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 and II below, which items have been prepared by the Exchange. The CBOE submitted the proposed rule change under section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 Substance of the Proposed Rule Change

The CBOE proposes to list up to seven expiration months, instead of the currently permitted six, for certain index options up until the expiration of those options in November 2004. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

#### CHAPTER XXIV

##### Index Options

\* \* \* \* \*

#### Terms of Index Options

##### Rule 24.9 (a) *General*.

(1) No change.

(2) *Expiration Months*. Index option contracts may expire at three-month intervals or in consecutive months. The Exchange may list up to six expiration months at any one time, but will not list index options that expire more than twelve months out. Notwithstanding the preceding restriction, until the expiration in *November 2004* [January 2000], the Exchange may list up to seven expiration months at any one time *for the SPX, MNX and DJX index option contracts*, provided one of those expiration months is *November 2004* [January 2000].

(3)-(5) No change.

(b)-(c) No change.

\* \* \* *Interpretations and Policies:*

.01-.11 No change.

\* \* \* \* \*

#### 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 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 parts of such statements.

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

###### 1. Purpose

The Exchange is proposing to amend paragraph (a)(2) of Rule 24.9 to allow, for a limited time, the Exchange to list up to seven expiration months in certain index options. Currently, Rule 24.9(a)(2) permits the Exchange to list only six expiration months in any index options at any one time.

Under the current application of the Rule, the Exchange generally will list three consecutive near term months and three months on a quarterly expiration cycle. The Exchange has been approached by a number of institutional customers who are interested in trading the Standard & Poor's 500 (SPX), CBOE Mini-NDX (MNX) and the Dow Jones Industrial Average (DJX) index options with an expiration of November 2004. These customers have explained to the Exchange that they believe that index options expiring at that time will

provide a useful tool to hedge positions in stocks overlying particular index options or to hedge market exposure to the equity markets generally against the uncertainty presented by the elections. By listing index options with a November 2004 expiration at this point, the Exchange will provide these customers with the opportunity to hedge their positions in an orderly fashion well in advance of the elections. The Exchange notes that the Chicago Mercantile Exchange has announced that it will add November 2004 expirations for certain index futures products that are generally considered financial instruments with which CBOE index options compete for customer interest.

The Exchange recognizes that this request to expand the allowable expiration months for index options is a unique situation, and so the Exchange only intends to seek the ability to list seven expiration months until the November 2004 options expire. The Exchange notes that a seventh expiration month was permitted for index options for January 2000 in connection with Y2K.<sup>5</sup>

The Exchange represents that it has the system capacity to adequately handle the series that would be permitted to be added by this proposal. The Exchange provided to the Commission information in a confidential submission that supports its system capacity representations.

###### 2. Statutory Basis

Because the temporary increase in the number of expiration months for index options would satisfy significant customer demand to address a unique hedging need, and because the series could be added without presenting capacity problems, the Exchange believes this rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

<sup>5</sup> See Securities Exchange Act Release No. 41252 (April 5, 1999), 64 FR 17702 (April 12, 1999) (order approving File No. SR-CBOE-99-09) (allowed the Exchange to list up to seven expiration months for certain index options up until the expiration of those options in January 2000, to provide customers with a useful tool to hedge positions in stocks overlying particular index options or to hedge market exposure to the equity markets generally against the uncertainty presented by potential Year 2000 computer problems).

<sup>11</sup> 17 CFR 200.30-3(29).

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

CBOE does not believe that the proposed rule change will impose any burden on competition 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

The CBOE has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>7</sup> Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. 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.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>8</sup> the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of

investors and the public interest.<sup>9</sup> The Commission believes that waiving the pre-filing requirement and accelerating the operative date does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition and, therefore, designates the proposed rule change as effective and operative immediately.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-49 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-49. This 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal offices of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2004-49 and should be submitted on or before August 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50068; File No. SR-NASD-2004-101]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Provide a Monthly Flat Fee for the Internal Distribution of PostData as an Alternative to the Monthly Per-Subscriber Fees Presently Available Under NASD Rule 7010(s)

July 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 28, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. 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

Nasdaq proposes to provide a monthly flat fee for the internal distribution of PostData as an alternative to the monthly per-subscriber fees presently available under NASD Rule 7010(s). The text of the proposed rule change is below.<sup>3</sup> Proposed new language is in italics.

#### 7010 System Services

(a)-(r) No change

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at <http://www.nasdaq.com>.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).