

on CBOE electronic DPMs ("e-DPMs") under CBOE Rule 8.93(vi).<sup>5</sup>

This proposed rule language would replace an existing DPM obligation under CBOE Rule 8.85(c)(ii), that is more of a generalized statement of the e-DPM obligation. CBOE Rule 8.85(c)(ii) currently requires a DPM to commit to "provid[ing] high quality markets and services and promot[ing] the Exchange as a marketplace to customers and other market participants \* \* \*." The Exchange believes that the proposed new language would provide a more specific statement of what is currently expected of a DPM.

Additionally, the CBOE represents that this proposed new language is consistent with the standards of measurement used by the Exchange in determining whether a DPM is meeting its overall market performance standards. CBOE Rule 8.88 (Review of DPM Operations and Performance) requires the Exchange's Modified Trading System Appointments Committee ("MTS Committee") to conduct an annual review of a DPM's operations and performance. Under CBOE Rule 8.88, the review shall include an evaluation of how a DPM has acted to make the Exchange competitive with other markets trading the same securities as those allocated to the DPM, taking into account the Exchange's market share in those allocated securities. In addition to making the DPM and e-DPM obligations more uniform, this proposal amends CBOE Rule 8.85(c) (Other Obligations) to expressly state that a DPM has the obligation to act to meet the levels of market performance that are currently expected of a DPM and that the MTS Committee currently considers when reviewing a DPM's market performance.

## 2. Statutory Basis

By clarifying a DPM's obligations and making them more consistent with the obligations required of e-DPMs, the Exchange believes that this proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>6</sup> in general, and further the objectives of section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

<sup>5</sup> See Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43208 (July 19, 2004) (order approving e-DPMs on the Exchange).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

The 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-2004-25 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-2004-25. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office 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-2004-25 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50528; File No. SR-CHX-2004-33]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Floor Broker Network and Connectivity Charges

October 13, 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 September 28, 2004, the Chicago Stock Exchange, Incorporated ("CHX" 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. Pursuant to section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> the Exchange has designated this proposal as establishing

<sup>8</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

or changing a due, fee, or other charge, which renders the proposed rule change effective immediately upon filing. 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 membership dues and fees schedule (the "Fee Schedule"), to bill its floor brokers for certain network and connectivity charges.

The text of the proposed rule change is available upon request at the CHX or the Commission.

### **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 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**

CHX floor brokers and their institutional customers use the NYFIX networks to route orders and process trade-related data. These types of networks are becoming an increasingly important tool for floor brokers as the institutional brokerage community continues to increase its use of technology.

Although the Exchange currently pays the network and connectivity charges associated with NYFIX, the Exchange believes that it is appropriate for its floor brokers who use these services to begin paying for a significant percentage of these costs.<sup>5</sup> Accordingly, the Exchange is proposing to rebill all but a small portion of these network and connectivity charges to the floor brokers who use this technology, based on the

<sup>5</sup> The Exchange currently rebills its on-floor member firms for other technology-related costs. See e.g., CHX Fee Schedule, Section H (Equipment, Information Services and Technology Charges) (rebilling for telephone charges, access and connection to financial information services or research and analytics providers and execution quality reports prepared by third parties).

proportion of each firm's use of the networks during each month.

At the same time, the Exchange would establish a separate connectivity charge credit, which would provide each floor broker firm that uses the networks with a credit of the firm's share of \$15,000.<sup>6</sup> This credit allows the Exchange to pay \$15,000 of the floor broker network and connectivity charges each month and to rebill its floor broker firms for the remaining charges.<sup>7</sup>

These fee changes are designed to take effect on October 1, 2004.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of section 6(b)(4) of the Act<sup>9</sup> in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

The Exchange does not believe that the proposed rule change will result in 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*

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

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

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder because it establishes or changes a due, fee or other charge imposed by the Exchange.

<sup>6</sup> Each firm's share of the total \$15,000 credit would be based on its percentage of the total monthly earned credits generated by that firm. Earned credits are generated by floor broker firms based, in general terms, on the number of billable shares executed by that floor broker in a given month. See CHX Fee Schedule, Section M(2)(a). The Exchange believes that it is appropriate to calculate the connectivity charge credit in this manner to reward firms that efficiently and effectively use technology to execute trades on the Exchange.

<sup>7</sup> The Exchange also is proposing to delete an obsolete provision relating to credits for E-Session trading activity. The Exchange ended its E-Session in 2001. See Release No. 34-44705 (August 15, 2001); 66 FR 43939 (August 21, 2001).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

At any time within 60 days of the filing of such 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 purpose 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. 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-CHX-2004-33 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-CHX-2004-33. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. 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-CHX-

2004-33 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50539; File No. SR-NASD-2004-153]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Conditional Exemption From Stock Option Position Limits for OTC Derivatives Dealers

October 14, 2004.

Pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 12, 2004, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. 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

NASD is proposed to amend NASD Rule 2860 to provide an exemption from stock options position limits for OTC Derivatives Dealers provided that certain conditions have been satisfied. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

#### 2800. SPECIAL PRODUCTS

\* \* \* \* \*

##### 2860. Options

(a) No Change.

##### (b) Requirements

(1) No Change.

##### (2) Definitions

(A) through (Q) No Change.

(R) *Delta Neutral*—The term "delta neutral" described a stock options position that has been hedged, in accordance with an SEC-approved

*pricing model, with a portfolio of instruments relating to the same underlying stock to offset the risk that the value of the options position will change with changes in the price of the stock underlying the options position.*

Current (R) through (FF) Renumbered as (S) through (GG).

(HH) *Net Delta*—The term "net delta" means the number of shares that must be maintained (either long or short) to offset the risk that the value of a stock options position will change with changes in the price of the stock underlying the options position.

Current (GG) through (BBB) Renumbered as (II) through (DDD).

#### (3) Position Limits

(A) *Stock Options*—Except in highly unusual circumstances, and with the prior written approval of NASD pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting along or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) through (vi) No Change.

(vii) *Equity Options Hedge*

Exemptions

a. No Change.

b. *Delta Hedging Exemption for OTC Derivatives Dealer* A stock options position of an OTC Derivatives Dealer (as that term is defined in Rule 3b-12 under the Act) affiliated with a member, in standardized or conventional options that is delta neutral, shall be exempt from position limits under this rule if the following conditions are satisfied:

1. *The member has obtained a written representation from its affiliated OTC Derivatives Dealer that such entity is hedging its stock options positions in accordance with its internal risk management control systems and pricing models approved by the SEC pursuant to Rules 15c3-1(a)(5) and 15c3-1f under the Act and that if it ceases to hedge stock options positions in accordance with such systems and models, that it will provide immediate written notice to the member.*

2. *The member must report in accordance with the paragraph (b)(5), all stock options positions (including those that are delta neutral) of 200 or more contracts (whether long or short) on the same side of the market covering the same underlying stock that are effected by the member.*

3. *Any stock options position of an OTC Derivatives Dealer that is not delta neutral shall be subject to position limits in accordance with this section (subject, however, to the availability of other exemptions). For these purpose, only the option contract equivalent of the net delta of such positions is subject to position limits. The options contract equivalent of the net delta is the net delta divided by 100.*

(viii) No change.<sup>3</sup>

(B) through (D) No Change.

(4) through (24) 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, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD 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

Over the past several years, NASD has increased in absolute terms the size of the options position and exercise limits as well as the size and scope of available exemptions for "hedged" positions.<sup>4</sup> These increases, however, have generally required a one-to-one hedge (e.g., one stock option contract must be

<sup>3</sup> Reference to subparagraph (b)(3)(viii) as unchanged was added pursuant to telephone conversation between Gary Goldsholle, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Ira Brandriss, Division of Market Regulation, Commission, on October 14, 2004.

<sup>4</sup> See Securities Exchange Act Release No. 47307 (February 3, 2003), 68 FR 6977 (February 11, 2003) (SR-NASD-2002-134); Securities Exchange Act Release No. 40932 (Jan 11, 1999), 64 FR 2930 (January 19, 1999) (SR-NASD-98-92); Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998), (SR-NASD-98-23); Securities Exchange Act Release No. 39771 (March 19, 1998), 63 FR 14743 (March 26, 1998) (SR-NASD-98-15).

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

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

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