

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *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 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 has neither solicited nor received comments on the proposed rule change.

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

The Exchange has designated the proposed rule change, as amended, as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup> The Exchange represents that 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) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for "non-controversial" proposals and make the proposed rule change, as amended, effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.<sup>11</sup> The Commission notes

that accelerating the operative date will allow the trading hours for options contracts overlying the Index Trading Stock to remain unchanged and provide continuity to the marketplace. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</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.<sup>14</sup>

## 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-BSE-2004-55 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-BSE-2004-55. 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

considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 3, 2004, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

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 Exchange. 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-BSE-2004-55 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E4-3701 Filed 12-16-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50840; File No. SR-CBOE-2004-79]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Trading Hours for Options on Units and Options on the Nasdaq-100 Index Tracking Stock

December 10, 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 November 30, 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. On December 10, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The

<sup>15</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> Amendment No. 1 is incorporated into this notice.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has

Exchange filed the proposal, as amended, as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</sup> 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 amend its rules relating to the hours of trading for options on Units<sup>6</sup> and options on the Nasdaq-100 Index Tracking Stock. The text of the proposed rule change is set forth below.

Proposed new language is in *italics*. Proposed deletions are in brackets.

\* \* \* \* \*

#### CHAPTER VI

Doing Business on the Exchange Floor (Rule 6.1–6.85)

#### Section A: General

Rule 6.1—Days and Hours of Business.

Rule 6.1.—No Change.

\* \* \* Interpretations and Policies:

.01–.02 No Change.

.03 *Options on Units, as defined under Interpretation and Policy .06 to Rule 5.3, and options on the Nasdaq-100 Index Tracking Stock may be traded on the Exchange until 3:15 p.m. each business day.*

.04 The Board of Directors has determined that the Exchange will not be open for business on New Year’s Day, Martin Luther King, Jr. Day, Presidents’ Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day. The Board has also determined that, when any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday, and that when any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless unusual business conditions exist at the time.

.05 [.04] No Change.

Rule 6.2–6.85 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 statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend CBOE Rule 6.1 (“Days and Hours of Business”) by adding a new Interpretation and Policy .03 that will codify CBOE’s practice of trading options on Units<sup>7</sup> and options on the Nasdaq-100 Index Tracking Stock (“QQQs”) until 3:15 p.m. (CST). Since CBOE began trading options on Units and options on the QQQs, the trading hours for these options have lasted until 3:15 p.m. (CST).

The 3:15 p.m. termination time coincides with the trading hours termination time for options on stock indexes, including options on the NDX index. Recently, the Nasdaq Stock Market, Inc. (“Nasdaq”) announced its intention to transfer the listing of the QQQs from the American Stock Exchange (“Amex”) to Nasdaq with trading to begin on December 1, 2004. The QQQs traded on the Amex until 3:15 p.m. (CST), and as of December 1, 2004, Nasdaq will close trading on the QQQs at 3 p.m. (CST), but will allow trading in the QQQs to continue in after hours trading until 7 p.m. (CST). CBOE intends to continue to trade options on the QQQs during its regular trading session until 3:15 p.m. (CST), as it does options on other index or basket products.

CBOE notes that the Amex and the Pacific Exchange, Inc. (“PCX”) are allowed under their respective rules to specifically trade options on QQQs until 3:15 p.m. (CST).<sup>8</sup> The new Interpretation and Policy .03 will codify CBOE’s longstanding practice of trading options on QQQs and Units until 3:15

p.m. (CST). CBOE represents that this will serve to avoid any confusion in the marketplace over the trading hours of QQQs options in light of Nasdaq’s shift of the listing venue of QQQs and to codify the trading hours for options on Units and on QQQs.

##### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

#### 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 Exchange has designated the proposed rule change, as amended, as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup> The Exchange represents that 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) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for “non-controversial” proposals and make the proposed rule

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> “Units” are defined in Interpretation and Policy .06 to CBOE Rule 5.3.

<sup>7</sup> Interpretation and Policy .06 to CBOE Rule 5.3 provides the listing standards for Units and other similar types of products.

<sup>8</sup> See Commentary .02 to Amex Rule 1 and Commentary .02 to PCX Rule 7.1.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

change, as amended, effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.<sup>13</sup> The Commission notes that accelerating the operative date will allow the trading hours for options on Units and options on the QQQs to remain unchanged and provide continuity to the marketplace. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</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.<sup>16</sup>

#### 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-CBOE-2004-79 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-2004-79. 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

<sup>13</sup> For purposes only of accelerating 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).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 10, 2004, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

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 Exchange. 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-2004-79 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E4-3700 Filed 12-16-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50837; File No. SR-CBOE-2004-76]

### Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to a DPM and Market-Maker Transaction Fee in Options on the Mini-Nasdaq-100 Index

December 10, 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 November 23, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or the "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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self Regulatory Organization's Statement of the Terms and Substance of the Proposed Rule Change

CBOE proposes to amend its Fee Schedule to establish a \$.10 per contract license fee on all Designated Primary Market-Maker and market-maker contracts traded in options on the Mini-Nasdaq-100 Index ("MNX"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at 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, CBOE 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 aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to establish a \$.10 per contract license fee on all Designated Primary Market-Maker ("DPM") and market-maker contracts traded in MNX options.

Currently, the MNX DPM is charged a \$.25 per contract supplemental transaction fee for transactions for its proprietary account, in addition to the regular transaction fee of \$.24 per contract. The \$.25 per contract supplemental transaction fee is charged to the DPM to assist the Exchange in offsetting some of the royalty fees that the Exchange must pay to the Nasdaq Stock Market ("Nasdaq") for its license to trade the MNX product.<sup>3</sup>

On November 23, 2004, MNX options will begin trading on the Exchange's Hybrid Trading System ("Hybrid"). In light of MNX options moving to the Hybrid system, the Exchange has determined to spread the license fee obligation among all market-makers in the MNX trading crowd, including the DPM. Instead of assessing only the MNX

<sup>17</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> Securities Exchange Act Release No. 43226 (August 29, 2000), 65 FR 54322 (September 7, 2000) (SR-CBOE-00-33).