

\$.003 per contract side. As before, the Exchange will continue to monitor its financial results to determine whether the Prospective Fee Reduction Program should be continued, modified, or eliminated in the future.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ 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 not necessary or appropriate in furtherance of 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 foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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.

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. Comments may also be submitted electronically at the following e-mail

address: rule-comments@sec.gov. All comment letters should refer to File No. SR-CBOE-2004-18. The 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-CBOE-2004-18 and should be submitted by April 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49517; File No. SR-CHX-2004-01]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

April 1, 2004.

On January 21, 2004, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its membership dues and fees schedule (the "Fee Schedule") to clarify the applicability of certain Fee Schedule provisions relating to transaction fees, and to establish a schedule of maximum monthly transaction fees for certain agency orders executed through a CHX floor broker. The Exchange proposed to

apply the Fee Schedule changes on a retroactive basis effective as of November 1, 2003.³ On February 19, 2004, the Exchange submitted an amendment to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 1, 2004.⁵ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, particularly, Section 6(b)(4) of the Act, which requires that the rules of an exchange provides for the equitable allocation of reasonable dues, fees, and other charges among its members.⁷ The Commission believes that the Exchange's proposal to apply its current Fee Schedule on a retroactive basis to November 1, 2003, should allow the Exchange to provide eligible order-sending firms that route significant levels of order flow to the CHX a transaction fee credit. The Commission notes that the retroactive application of the proposal will not result in the assessment of any additional fees against CHX members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change, as amended, (SR-CHX-2004-01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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³ On December 31, 2003, the Exchange filed an identical amendment to the Fee Schedule, as immediately effective. See SR-CHX-2003-39. Because the Exchange also sought to apply the Fee Schedule amendments on a retroactive basis (*i.e.*, to the months November and December, 2003), the Exchange submitted the proposed rule change for notice and comment.

⁴ See facsimile from Ellen J. Neely, Senior Vice President & General Counsel, CHX, to A. Michael Pierson, Attorney, and Marisol Rubecindo, Law Clerk, Division of Market Regulation ("Division"), Commission, dated February 19, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the proposed rule change in its entirety.

⁵ See Securities Exchange Act Release No. 49298 (February 23, 2004), 69 FR 9660.

⁶ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 C.F.R. 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.