

Register on October 15, 2003.⁴ 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 exchange⁵ and, in particular, the requirements of section 6 of the Act⁶ and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5)⁷ of the Act because it should enable the Exchange to accommodate customers that seek immediate execution or cancel orders.

It is therefore ORDERED, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-BSE-2003-08), as amended, be, and it hereby 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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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49107; File No. SR-CBOE-2003-37]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Appointment of the Members and Chairman of Its Governance Committee

January 20, 2004.

On September 5, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 that would give the Chairman of the Board of Directors ("Board") the authority to appoint the members and

chairman of CBOE's Governance Committee. CBOE submitted Amendment No. 1 to the proposed rule change by facsimile on November 6, 2003.³ The proposed rule change was published for comment in the **Federal Register** on November 18, 2003.⁴ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,⁶ which requires, among other things, that CBOE's rules be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission notes that the proposed rule change makes the appointment process for the Governance Committee consistent with the process currently in place for other standing committees of the Board, and also eliminates a redundancy between the Exchange's Constitution and its rules with respect to the appointment process for the Audit and Compensation Committees.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change, as amended (SR-CBOE-2003-37) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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³ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission, dated November 6, 2003 ("Amendment No. 1"). In Amendment No. 1, CBOE clarified the current procedure by which Governance Committee members are appointed, explained the reason for the proposed rule change, and revised a portion of the original proposed rule text.

⁴ Securities Exchange Act Release No. 48913 (November 11, 2003), 68 FR 65975 (November 18, 2003).

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49100; File No. SR-DTC-2003-15]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Revisions to the Fee Schedule

January 20, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 29, 2003, The Depository Trust Company ("DTC") 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 primarily by DTC. 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 proposed rule change consists of revisions to DTC's fee schedule for services.²

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

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

The purpose of the proposed rule change is to adjust the fees DTC charges for various services so that the fees are aligned with DTC's estimated service costs for 2004, effective with respect to services provided on and after January 1, 2004.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations

¹ 15 U.S.C. 78s(b)(1).

² A copy of DTC's 2004 service fee revisions is attached as Exhibit 1.

³ The Commission has modified parts of these statements.

⁴ See Securities Exchange Act Release No. 48596 (October 7, 2003), 68 FR 58435 (October 15, 2003).

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

thereunder applicable to DTC because fees will be more equitably allocated among users of DTC services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

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

Because the foregoing rule change establishes or changes fees to be imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2).⁵ 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.

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-DTC-2003-15. 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, 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 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 DTC and DTC's Web site at *www.dtc.org/impNtc/mor/index.html*. All submissions should refer to File No. SR-DTC-2003-15 and should be submitted by February 17, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Peterson,
Assistant Secretary.

EXHIBIT 1.—2004 DTC SERVICE FEE REVISIONS

Service	Current fee	Proposed fee
ASSET Servicing		
Dividends		
P&I:		
Floating Payable Date Securities (ARPs, ARNs)	\$1.31	\$2.40
VRDO	2.40	2.90
DIVANN—Annual Fee	1,800.00	9,000.00
Reorg New Fees:		
Proxy Record Date Meetings	0.00	(1)
Dissent Letters/Shareholder Demands	0.00	(2)
Reorg Modified Fees:		
Full Prerefundings	0.00	7.00
Voluntary Exchange/Tender	35.00	(3)
Voluntary Dividend Reinvest Program	11.29	14.00
Remarketing Agent Fee	0.00	17.50
CRS Service Election	25.00	35.00
Custody Fee:		
COD/Pickup—Next Day	16.91	30.00
COD/Pickup— Next Day	18.80	24.00
COD/Ship	15.35	24.00
COD/Redeposit	3.48	4.50
Trailing Docs.	8.00	15.00
Certificate Copies—PINS	25.69	30.00
W/T's	46.69	65.00
Rush W/T's	12.83	24.00
COD/Partial	37.93	50.00
Reorg Rejects	12.67	16.00
Cancel Processing	4.37	5.00
Account No. Change	3.09	4.50
Non Securitized Rec.	7.31	9.00
Coupon Clipping	4.72	5.50
Custom/Mail Letter	16.91	30.00
COD/Pickup—Same Day	0.17	1.00
Non-Transferables (Long Position) Surcharge—Greater Than 6 Years		
Deposits:		
DWAC	1.00	1.50
Rejects	41.00	50.00

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 200.30-3(a)(12).

⁵ 17 CFR 240.19b-4(f)(2).

EXHIBIT 1.—2004 DTC SERVICE FEE REVISIONS—Continued

Service	Current fee	Proposed fee
Deposit Mail Charge	1.05	1.50
Research of CUSIP for Name Change	4.85	15.00
WTs:		
WT DMD	5.40	9.50
WT Delivery to the Participant	7.90	9.50
DWAC	1.00	1.50
WT DMD Mail Cost	2.50	3.00
WT Hold and Bust Feature	0.60	1.00
Rush WT Transfer	49.69	65.00
WT Mail Issue Surcharge for TA Outside of NYC	1.05	1.50
Rejects	41.00	50.00
WT DMA (Cert or DRS)	4.60	5.00
CODs:		
Critical COD (Cede and Co.)	46.69	75.00
DRS:		
DRS Certificate Surcharge (Cert. Disincentive)	1.00	5.00
DRS LPA Account Charge per Month	225.00	275.00
DRS LPA Application Fee	0.00	250.00
Securities Processing Research Fee	0.00	55.00
SETTLEMENT		
Deliveries:		
MMI Transactions	0.56	0.70
Day (Zone B) Receiving	0.26	0.27
Day (Zone B) Deliveries	0.44	0.45
Payment Orders	0.10	0.11
Memo Segregation	0.10	0.09
Institutional Deliveries	0.17	0.16
CNS Deliveries	0.17	0.16
New Issues:		
Basic BEO Eligibility	250.00	275.00
CD BEO Eligibility	90.00	125.00
Non-Receipt of Final Offering Docs	0.00	300.00
Multi Certificated	675.00	1,000.00
MMI Swings	0.00	250.00
Single Certificated	585.00	750.00
WUN Incentive Rebate	(4)
INTERNATIONAL TAX SERVICES		
Foreign Tax Service (EDS)	27.00	(5)
DTax—PTS Inquiries	5.00	15.00
DTax—Web	1,500.00	5,000.00
DTax—CCF File	1,500.00	7,500.00
U.S. Tax Withholding—Minimum Annual Fee	N/A	5,000.00
U.S. Tax Withholding—Tax Adjustments	1.50	1.80
TRAINING		
E-Learning Courses (Per Course)	0.00	75.00
Instructor Led Course (Customer Site)	(6)	(7)
Instructor Led Course (Internet)	0.00	(8)
E-Learning Certification Exam	0.00	400.00

¹ \$0.50 per participant record date position.

² \$400 per dissent letter/shareholder demand processed.

³ \$35 per Letter of Transmittal, \$20 offer service fee per position holder, and a voluntary offering instruction fee of \$20 for the first 50 instructions, and \$0.70 for each instruction over 50.

⁴ A rebate of \$52 for single CUSIP issues, and \$107 for multi-CUSIP issues, will be applied if the issue is submitted via WUM.

⁵ One half of one percent (.5%) of the tax relief secured by the participant. A minimum fee of \$30 and a maximum fee of \$500 per transaction will apply.

⁶ Current fee is \$1000 per day per customer visit.

⁷ \$750 per student with a two student minimum.

⁸ \$250 per student with a two student minimum.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49099; File No. SR-NASD-
2004-07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. To Terminate Nasdaq's Application of the Primex Auction System

January 16, 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 January 14, 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 ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6)⁴ thereunder, which renders the proposal effective upon filing with the Commission. On January 16, 2004, the Nasdaq filed Amendment No. 1 to the proposed rule change.⁵ 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 the Substance of the Proposed Rule Change

Nasdaq is filing with the Commission a proposed rule change concerning its decision to terminate the Nasdaq Application of the Primex Auction System ("Primex" or "System"). Nasdaq has designated this proposal as non-controversial and requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).⁶ If the Commission grants the waiver, this rule proposal, which is effective upon filing with the Commission, shall become operative at the close of

business on January 16, 2004, pursuant to SEC Rule 19b-4(f)(6).⁷

Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

[5010. NASDAQ Application of the PRIMEX AUCTION SYSTEM™

5011. Definitions

For purposes of this Rule Series, unless the context requires otherwise:

(a) "Application" or "Nasdaq Application" as used in this Rule Series, and "Nasdaq Application of the Primex Auction System" as used throughout the NASD Rules means the voluntary Nasdaq trading service facility that permits NASD member firms, among other things, to submit orders in Primex Eligible Securities to be exposed to a Crowd of Participants in an electronic auction format for the purpose of obtaining an execution for their own account or the account of a customer; to have required reports of any resulting trades automatically disseminated to the public and the industry; and to "lock in" these trades as necessary by sending both sides to the applicable clearing agency designated by the Participants involved for clearance and settlement, all in accordance with this Rule Series and other applicable rules and policies of Nasdaq.

(b) "Primex Auction System Participant," "Participant," or "Participant Firm" means a broker-dealer registered with the NASD that, when authorized, can access and participate in the Application for its customers or its own account, consistent with this Rule Series. Participants access the Application through one or more Subscribers associated with that Participant within the Application.

(c) "Subscriber" means a user associated with a Participant who, when authorized, can access and participate in the Application on behalf of that Participant, consistent with this Rule Series. A user also can access and participate directly in the Application on its own behalf, but in the name of a Participant, subject to a sponsored arrangement with that Participant, and consistent with these Rules.

(d) "Firm Administrator" means a Subscriber who, for a particular Participant, is authorized among other things to: (1) Monitor and control access to and participation in the Application by all of that Participant's Subscribers, including establishing Credit Limits for each of the Participant's Subscribers who access and participate in the Application on behalf of or in the name of

that Participant; and (2) view the status of the Clearing Limits applicable to the Participant overall.

(e) "Nasdaq Supervisor" means the Nasdaq staff responsible for establishing and supervising certain operational functions with respect to the operation of the Application.

(f) "Credit Limits" means the dollar amount of aggregated purchases or sales established within the Application by a Participant's Firm Administrator for each of the Participant's Subscribers which, when reached, causes the Application to: (1) Inhibit any future executions or the entry of future interest for that Subscriber; (2) cancel any orders and withdraw any Indications resident within the Application for that Subscriber; and (3) send a notice to that Subscriber, its Firm Administrator, and the Nasdaq Supervisor. Credit Limits may be established, monitored, and modified by the Firm Administrator on a real-time basis directly through the Application.

(g) "Clearing Limits" means the dollar amount of aggregated purchases and sales (calculated separately and not netted) of all Subscribers, collectively for a Participant, effected through or in the name of that Participant, that is established within the Application for that Participant, which, when reached, causes the Application to: (1) Inhibit any future executions for all Subscribers associated with that Participant; (2) cancel any orders and withdraw any Indications resident within the Application for all Subscribers associated with that Participant; and (3) send a notice to that Participant's Firm Administrator, the Nasdaq Supervisor, and to the clearing broker for that Participant provided that the clearing broker also is a Participant. If the clearing broker is not a Participant in the Application, then the Nasdaq Supervisor will notify the clearing broker that the Clearing Limits have been reached as soon as practicable. Clearing Limits for a Participant may be monitored on a real-time basis by the Participant's Firm Administrator and can be established, monitored, and modified by the Firm Administrator of the Participant's clearing broker, provided the clearing broker also is a Participant. Clearing Limits also can be established and modified by the Nasdaq Supervisor on behalf of the clearing broker.

(h) "Crowd," "Primex Crowd" or "Crowd Participant" means Primex Auction System Participants that, when authorized, can access and participate in the Application consistent with this Rule Series by: (1) Submitting orders to be exposed to other Participants; (2)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See letter from Peter R. Geraghty, Assistant Vice President and Assistant General Counsel, Nasdaq to John Polise, Assistant Director, Division of Market Regulation, Commission, dated January 16, 2004.

⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁷ 17 CFR 240.19b-4(f)(6).