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Dated: July 29, 2003.

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48223; File No. SR-CBOE-2003-26]

### 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 Its Fiscal Year 2004 Fee Schedule

July 24, 2003.

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 July 1, 2003, 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, II, and III below, which Items have been prepared by the CBOE. The CBOE filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, in that the proposed rule change establishes or changes a due fee or other charge, which renders the proposal effective upon filing with the Commission. The CBOE filed via facsimile Amendment No. 1 on July 23, 2003.<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 make certain changes to its Fee Schedule for Fiscal Year 2004. 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, the 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 purpose of this proposed rule change is to make certain fee reductions, additions and changes. The proposed amendments are the product of the Exchange's annual budget review. The fee changes were approved by the Exchange Board of Directors pursuant to CBOE Rule 2.22 and will take effect on July 1, 2003. The Exchange proposes to amend the following fees.

###### (i) Index Order Book Official Execution Fee Reduction and Simplification

The Exchange proposes to significantly reduce and simplify the Index Customer Order Book Official Execution Fees ("Index OBO fees"). The Exchange represents that these are the rates charged when a floor broker or market maker buys or sells index option contracts out of the order book. Currently, there is a sliding scale of index OBO fee rates that change based on both the size of the order and the amount of the per-contract premium. The new per contract Index OBO fee rate will be flat rates (regardless of order size) of \$.60 per book contract for book contracts with a premium greater than or equal to \$2 and \$.40 per contract for Book contracts with premiums less than \$2.

As in prior years, OBO fees will continue to be waived for market orders sent to the book prior to the opening and executed during opening rotation. In the OEX option class, fees will continue to be waived for market and limit orders sent to the book prior to the opening and executed during opening rotation. Cabinet/accommodation/liquidation trades will continue to be charged \$.10 per contract.

The Exchange estimates that the overall effect of the changes will be a reduction of approximately 33% in Index OBO fees.

###### (ii) Customer Large Trade Discounts

The Exchange proposes to establish a pilot program providing a customer large trade discount in the form of a cap on customer transaction fees, to be in effect for the period July through December 2003 for most CBOE index option products.<sup>6</sup> The Exchange determined the contract size at which the cap would be implemented after reviewing recent trading activity in each of the index products. Trade match and floor brokerage fees are not subject to the cap on fees.

Regular customer transaction fees will only be charged up to the following quantity of contracts per order, for the following underlying indexes:

1. Dow Jones indexes (including DIA)—charge only the first 7,500 contracts;
2. SPX—charge only the first 5,000 contracts;
3. OEX (including XEO and OEF), NDX and other indexes (not including MNX)—charge only the first 3,000 contracts.

###### (iii) Non-OCC Firm Booth Fees and Booth Rental Incentive Plan

The Exchange proposes to reduce monthly rental rates for most of the booths<sup>7</sup> that the Exchange leases to member organizations that are not members of the OCC ("non-OCC firms") by \$250, to a new rate of \$300 per month. OCC member firms will continue to be assessed at \$165 per month.

In an effort to increase booth space rentals, the Exchange will also establish a booth rental incentive plan that will be in effect for the period July 2003 through June 2004. Pursuant to this plan, all Members and Member Firms, both OCC and non-OCC, will be permitted to lease additional perimeter and Green Room booth space at a reduced rate of \$100 per month per additional booth. The discounted price is only applicable to booths leased in excess of the quantity that the Member or Firm had been leasing as of June 1, 2003. For new Members and Member Firms, the first four booths will be assessed at the normal rate effective as of July 1, 2003, and any additional

<sup>6</sup> The MNX option class will not be included in this program since MNX customer fees were significantly reduced in June 2002 to a flat rate of \$.15 per contract. See Securities Exchange Act Release No. 46045 (June 6, 2002), 67 FR 41284 (June 17, 2002) (noticing SR-CBOE-2002-28).

<sup>7</sup> Specifically, the reduced rates will apply to booths around the perimeter of the main 4th floor trading floor ("perimeter booths") and those in the "Green Room" (the second floor trading area.) Booth rates will not change for those booths designated as OEX, OEX book, or Dow Jones/MNX booths.

<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)(2).

<sup>5</sup> See July 23, 2003 letter from Chris Hill, Attorney, CBOE to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, CBOE removed one of the fee changes and made revisions to the Fee Schedule.