

Alternatively, transfers of these securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of these securities or assets to the receiving entity, or by mergers or liquidations, or otherwise, and Applicants request approval for these forms of restructuring transactions as well.

Applicants state that the corporate reorganizations or restructurings of Nonutility Subsidiaries and Nonutility Investments would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes. Applicants state that none of these reorganizations or restructurings will involve the sale or other disposition of any utility assets of the Utility Subsidiaries or any corporate reorganization involving the Utility Subsidiaries, nor does the approval sought in this subsection extend to the acquisitions of any new businesses or activities not constituting an Authorized Nonutility Business.

D. Payment of Dividends by Nonutility Subsidiaries

To the extent not otherwise exempt under the Act, Applicants request authority for each Nonutility Subsidiary and KO, South Construction, and Tri-State to declare and pay dividends out of capital or unearned surplus to its respective parent company, where permitted under applicable corporate law, and where the dividend will not be detrimental to the financial integrity or working capital of any company in the Cinergy holding company system. Additionally, Applicants state that, without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries or if at the time of the declaration or payment such Nonutility Subsidiary has negative retained earnings.

E. Exemptions from Section 13(b)

Applicants request authority for Nonutility Subsidiaries to enter into agreements to perform services. Applicants request authority for Nonutility Subsidiaries to perform certain services (namely, project development services and administrative services and other

support services)¹⁵ for any Nonutility Subsidiary within any of the five categories enumerated immediately below at fair market prices determined without regard to cost, and therefore request an exemption from section 13(b) and the cost standards of rules 90 and 91.

(i) A FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG that sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC") or an appropriate state public utility commission, provided that the purchaser of the EWG's electricity is not an affiliated public utility or an affiliate that re-sells such power to an affiliated public utility;

(iii) A "qualifying facility" ("QF"), as defined under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, or to an electric utility company other than an affiliated electric utility at the purchaser's "avoided cost" determined under PURPA;

(iv) An EWG or a QF that sells electricity at rates based upon its costs of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not an affiliated public utility; or

(v) A Nonutility Subsidiary that is a Rule 58 Company or any other Nonutility Subsidiary that (a) is partially owned, provided that the ultimate purchaser of goods or services is not an affiliated public utility, (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in (i)

¹⁵ Applicants state that project developmental services are anticipated to include such services as research and due diligence with respect to potential projects and transactions, preparation of bid documents, investment proposals, customer proposals and the like, preliminary engineering, construction, licensing and operational studies and analyses, acquisitions of options, and other legal, accounting, marketing, engineering, financial and similar services relating to acquisitions of project investments and consummating transactions with customers. Applicants state that administrative and other support services include without limitation overall strategic planning, operations and maintenance, environmental, information systems, engineering and construction, risk management, marketing, finance, legal, accounting, employment and tax.

through (iv) above or (c) does not derive, directly or indirectly, any part of its income from sources within the United States and is not a public utility company operating within the United States.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48807; File No. SR-CBOE-2003-40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Options on Certain CBOE Volatility Indices

November 19, 2003.

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 September 12, 2003, the Chicago Board Options Exchange, Inc. ("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. On November 18, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.³ 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 hereby proposes to amend certain of its rules to provide for the listing and trading of options on several volatility indexes; specifically: the CBOE Volatility Index ("VIX"); the CBOE Nasdaq 100" Volatility Index ("VXN"); and the CBOE Dow Jones Industrial Average" Volatility Index ("VXD"). Options on each index would

¹ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jim Flynn, Attorney, CBOE, to Florence Harmond, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 18, 2003 ("Amendment No. 1"). Amendment No. 1 revises the original rule filing by defining the reporting authority and terms of these index option contracts, including that the interval between strike prices shall be no less than \$2.50, and accordingly replaces CBOE's original Exhibit A.