information processor) to be filed with the Commission on July 19, 2001. In light of the current negotiations regarding the existing Plan and the representations of the Participants in their request to the Commission, the Commission approves the requested extension of the Plan until May 31, 2001.

The Commission notes that the revised Plan, which must be filed with the Commission by July 19, 2001, must provide for either (1) a fully viable alternative exclusive securities information processor (''SIP'') for all Nasdaq securities, or (2) a fully viable alternative nonexclusive SIP in the event that the Plan does not provide for an exclusive SIP. If the revised Plan provides for an exclusive consolidating SIP, a function currently performed by Nasdaq, the Commission believes that, to avoid conflicts of interest, there should be a presumption that a Plan participant, and in particular Nasdaq, should not operate such exclusive consolidating SIP. The presumption may be overcome if: (1) the Plan processor is chosen on the basis of bona fide competitive bidding and the participant submits the successful bid; and (2) any decision to award a contract to a Plan Participant, and any ensuing review or renewal of such contract, is made without that Plan Participant's direct or indirect voting participation. If a Plan Participant is chosen to operate such exclusive SIP, the Commission believes there should be a further presumption that the Participant-operated exclusive SIP should operate completely separate from any order matching facility operated by that Participant and that any order matching facility operated by the Participant must interact with the plan-operated SIP on the same terms and conditions as any other market center trading Nasdaq listed securities. Further, the Commission will expect the NASD to provide direct or indirect access to the alternative SIP, whether exclusive or non-exclusive, by any of its members that qualifies, and to disseminate transaction information and individually identified quotation information for these members through the SIP.

In addition, the revised Plan should resolve the issues, which have been pending since the implementation of the Plan, of whether there is a need for an intermarket linkage for order routing and execution, whether there is a need for a trade-through rule to facilitate the trading of OTC securities pursuant to UTP, and how the BBO calculation should be determined for securities traded pursuant to the Plan.

Furthermore, the revised Plan should be open to all SROs, and the Plan should share governance of all matters subject to the Plan equitably among the SRO Participants. The Plan also should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide a role for participation in decision making to non-SROs that have direct or indirect access to the alternative SIP provided by the NASD. The Commission expects the parties to continue to negotiate in good faith on the above matters [12] as well as any other issues that arise during Plan negotiations.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1–2 under the Act until the earlier of May 31, 2001, or until such time as the calculation methodology of the BBO is based on a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3–1 under the Act to the BSE through May 31, 2001. The Commission believes that the temporary extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

VII. Conclusion

It is Therefore Ordered, pursuant to sections 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3–2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through May 31, 2001, and certain exemptive relief through May 31, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[12] *See also* discussion in the SuperMontage order, *supra* note 4.

[13] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44095; File No. SR–CBOE–01–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Marketing Fees

March 23, 2001.

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 February 28, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') 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 the Exchange. 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 CBOE proposes to make a change to its Marketing Fee, under its Fee Schedule, to exempt call/put ''combo'' transactions from the Marketing Fee. 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 Statements 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 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Last year, the Exchange imposed a $0.40 per contract marketing fee to collect funds to be used by the appropriate Designated Primary Market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Maker (''DPM'') for marketing its service and attracting order flow to the CBOE.[3]

Currently, this marketing fee is applicable to all market-markers to market-maker options transactions.[4] It has, however, recently come to the attention of the Exchange that this marketing fee makers it unprofitable for market makers to do reversals and conversions in which a market maker trades a given amount of an underlying security against an equivalent number of call/put ''combos,'' *i.e.,* buying the call and selling the put (or vice versa) of the same option class in equal quantities with the same strike price in the same expiration month. In the case of conversion, the market maker buys the put, sells the call, and buys the underlying security. For reversals, the market maker sells the put, buys the call, and sells the underlying security.

Conversions and reversals are popular trading strategies that contribute to market liquidity, but they usually have to be done at a smaller profit margin that other types of trades. When the $0.40 marketing fee is imposed upon the call/put ''combo'' transactions, the trades frequently cease to be profitable to execute on the Exchange.

Consequently, the Exchange has decided to exempt from the Marketing Fee section of its Fee Schedule all such call/put ''combo'' transactions. The Exchange represents that it will use trade data to determine qualifying transactions. While the Exchange has no current plans to require documentation to show that specific trades qualify for this exemption, the Exchange reserves the right to do so in the future.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(4) of the Act[6] in particular, in that it provides 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

The Exchange had neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder,[8] upon filing. 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 purpose 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. 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 CBOE. All submissions should refer to File No. SR–CBOE–01–09 and should be submitted by April 20, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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[3] *See* Securities Exchange Act Release No. 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000) File No. SR–CBOE–00–28).

[4] *See id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii)

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44096; File No. SR–NASD–01–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq By-Law Definitions of ''Broker'' and ''Dealer''

March 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4[2] thereunder, notice is hereby given that on March 19, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. Nasdaq has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

Nasdaq is proposing to amend the definitions of ''broker'' and ''dealer'' in Article I of the By-Laws of Nasdaq to conform with the recent changes to the definitions of ''broker'' and ''dealer'' in the Act, as amended by the Gramm-Leach-Bliley Act of 1999 (''GLBA'').[4] Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

By-Laws of the NASDAQ Stock Market, Inc.

Article I—Definitions

* * * * *

(c) ''broker'' *shall have the same meaning as in section 3(a)(4) of the Act;* [means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Pub. L. No. 106–102, 113 Stat. 1338 (1999).