the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Application for Reimbursement for Hospital Insurance Services in Canada; OMB 3220–0086. Under section 7(d) of the Railroad Retirement Act (RRA), the RRB administers the Medicare program for persons covered by the railroad retirement system. Payments are provided under section 7(d)4) of the RRA for medical services furnished in Canada to the same extent as for those furnished in the United States. However, payments for the services furnished in Canada are made from the Railroad Retirement Account rather than from the Federal Hospital Insurance Trust Fund, with the payments limited to the amount by which insurance benefits under Medicare exceed the amounts payable under Canadian Provincial plans.

Form AA–104, Application for Canadian Hospital Benefits Under Medicare—Part A, is provided by the RRB for use in claiming benefits for covered hospital services received in Canada. The form obtains information needed to determine eligibility for, and the amount of any reimbursement due the applicant. One response is requested of each respondent. Completion is required to obtain a benefit.

No changes are proposed to Form AA–104.

Number of respondents: 50.

Estimated completion time: 10 minutes.

Estimated annual burden hours: 8.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–5419 Filed 3–17–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 21, 2005:

A Closed Meeting will be held on Tuesday, March 22, 2005 at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, March 22, 2005, will be:

Formal orders of investigations; Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 15, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–5463 Filed 3–15–05; 4:18 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51366; File No. SR–CBOE–2004–75]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Introduction of Remote Market-Makers

March 14, 2005.

I. Introduction

On November 22, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 relating to the introduction of Remote Market-Makers (''RMMs''). On January 10, 2005, CBOE filed Amendment No. 1 to the proposed rule change.[3]

On January 21, 2005, CBOE filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change and Amendments No. 1 and 2 were published for comment in the **Federal Register** on February 4, 2005.[5] The Commission received no comment letters on the proposal. This order approves the proposed rule change and Amendments No. 1 and 2.

II. Discussion

CBOE's Hybrid Trading System merges the electronic and open outcry trading models, offering market participants the ability to stream electronically their own firm disseminated market quotes representing their trading interest. The current Hybrid rules allow market makers to stream electronic quotes only when they are physically present in their appointed trading stations. This requirement prevents ''remote market making,'' a practice whereby market

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes CBOE's original 19b–4 filing in its entirety.

[4] Amendment No. 2 replaces and supersedes CBOE's original 19b–4 filing and Amendment No. 1 in their entirety.

[5] Securities Exchange Act Release No. 51107 (January 31, 2005), 70 FR 6051.

makers may submit quotes from locations outside of the physical trading station for that class.

The proposed rule change would accommodate remote market making, by authorizing a new membership status called RMM. RMMs would have the ability to submit quotes to the CBOE from a location outside of the physical trading station for the subject class. To accommodate RMMs, the Exchange proposes to amend existing, and adopt new, rules addressing RMM obligations, RMM appointments, Priority and Allocation of Trades, and Evaluation of RMMs.

After careful review, 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 exchange[6] and, in particular, the requirements of Section 6 of the Act.[7] Specifically, the Commission finds that the proposal to add a new category of options market-making participant, RMMs, to the CBOE Hybrid trading platform is consistent with Section 6(b)(5) of the Act[8] in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest.

A. Registration and Appointment of RMMs

The Exchange proposes to adopt new Rule 8.4 to address the definitional, registration, affiliation, and appointment issues relating to RMMs.[9] Proposed CBOE Rule 8.4(a) defines an RMM as an individual member or member organization registered with the Exchange that makes transactions as a dealer-specialist from a location other than the physical trading station for the subject class.[10] The rule also proposes that transactions of RMMs that are executed on the Exchange are deemed market maker transactions for purposes of Chapter VIII of the CBOE Rules and CBOE Rules 3.1 and 12.3(f).

Proposed Rule 8.4(b), Registration and Approval of RMMs, provides that the registration and approval of RMMs would be in accordance with CBOE Rule 8.2.[11] As a result, RMMs would be approved in the same manner that other market makers are approved and any member approved as a market maker would be approved as an RMM upon requesting RMM status with the Exchange's Membership department. Importantly, the Commission notes that CBOE has no authority under its rules to discriminate among applicants. An RMM retains its approval to act as an RMM until the RMM requests the Exchange to relieve it of its approval to act as an RMM and the Exchange grants such approval or until the Exchange terminates its approval to act as an RMM pursuant to Exchange Rules.[12]

Paragraph (d) of CBOE Rule 8.4 provides that an RMM may choose either a Physical Trading Crowd (''PTC'') or Virtual Trading Crowd (''VTC'') appointment.

A PTC Appointment would correspond to the location of a physical trading station on the floor of the CBOE. An RMM that chooses a PTC appointment would have the right to quote electronically (and not in open outcry): 30 Hybrid 2.0 Platform (''Hybrid 2.0'' or ''Hybrid 2.0 Platform'') products traded in that specific trading station for each Exchange membership it owns;[13] or 20 Hybrid 2.0 products traded in that specific trading station for each Exchange membership it leases.[14]

A VTC Appointment would confer the right to quote electronically (and not in open outcry) an appropriate number of products selected from ''tiers'' that have been structured according to trading volume statistics. By being able to choose the products it wishes to trade, an RMM would have flexibility in choosing and structuring its appointment. As proposed, RMMs would be able to choose from all products included in the Hybrid 2.0 Platform. Of those products, Tier A would consist of the 20% most actively-traded products over the preceding three calendar months, Tier B the next 20%, etc., through Tier E, which would consist of the 20% least actively-traded products. All products within a specific Tier would be assigned an ''appointment cost'' depending upon its Tier location. Each Tier A product would have an ''appointment cost'' of .10, each Tier B product would be .0667, each Tier C product would be .05, each Tier D product would be .04, and each Tier E product would be .033. An RMM as part of its VTC appointment may select for each membership it owns or leases any combination of Hybrid 2.0 products whose aggregate ''appointment cost'' does not exceed 1.0. For example, an RMM could request six ''A Tier'' products (6x.10), four ''C Tier'' products (4x.05), and five ''D Tier'' products (5x.04) to constitute its VTC appointment.

The Exchange would rebalance the ''tiers'' once each calendar quarter, which may result in additions or deletions to their composition. When a product changes ''tiers'' it would be assigned the ''appointment cost'' of that tier. Upon rebalancing, each RMM with a VTC appointment would be required to own or lease the appropriate number of Exchange memberships reflecting the revised ''appointment costs'' of the products constituting its appointment. The Commission believes the proposed PTC and VTC appointment rules are consistent with the Act.

B. Affiliations Among Market Makers

Proposed CBOE Rule 8.4 (c) provides that, except as specified in the rule, an RMM may not have an appointment as an RMM in any class in which it or its member organization serves as Designated Primary Market-Maker (''DPM''), electronic DPM (''e-DPM''), RMM, or market maker on CBOE. The Commission believes this prohibition is important because of the potential under CBOE's rules for allocations of trades to be based, in part, on an equal allocation methodology. Under an equal allocation methodology, a participant can be allocated contracts based solely on its quote or order at the best bid or offer, regardless of the size of such participant's quote or order. Accordingly, absent a prohibition, there could be an incentive for affiliated market makers to each post separate quotes to increase their total contract allocation.

1. Affiliated Floor Market-Maker Pilot Program

CBOE Rule 8.4(b) would provide exception to this general prohibition to allow a CBOE Member or Member Firm operating as an RMM in a class to have, as part of an 18-month pilot program, one market maker affiliated with the RMM organization trading in open outcry in any specific option class

[6] The Commission has considered the amended proposed rule change's impact on efficiency, competition, and capital formation.15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange also proposes to amend Rule 8.3 to clarify its non-applicability to RMMs.

[10] The Exchange proposes to amend CBOE Rule 8.1 to eliminate from the definition of Market-Maker the requirement that transactions be effected on the trading floor. Transactions by market makers that comply with the requirements of CBOE Rule 8.7.03 would be considered market maker transactions.

[11] The Exchange proposes a corresponding change to CBOE Rule 8.2(a) to provide that applicants must pass a member's exam as opposed to a floor member's exam.

[12] The termination of an RMM's approval to act as an RMM would be pursuant to proposed CBOE Rules 8.61 or 8.4(e).

[13] The Exchange proposes in CBOE Rule 1.1(aaa) definitions for Hybrid Trading System and Hybrid 2.0 Platform.

[14] For purposes of this rule, the term ''product'' refers to all options of the same single underlying security/value.

allocated to the RMM.[15] The Commission is approving this limited exception on a pilot basis because CBOE represents that firms do not want to have an RMM and a market maker to increase their allocation of contracts in electronic trades, but instead to be able to both make electronic markets remotely and to participate outcry trading.

2. Multiple Aggregation Units

CBOE Rule 8.4(c) would also allow a CBOE Member or Member Firm to have, as part of a 12-month pilot program, multiple aggregation units operating as separate RMMs within the same class, provided specific criteria are satisfied. CBOE has stated there are three primary instances in which this proposed multiple aggregation unit exception would be utilized.

• First, large broker-dealers are frequently divided into desks that pursue separate trading strategies, and each of these trading desks may be interested in serving in an RMM capacity. Without an aggregation unit exception, each broker-dealer would be limited to only one RMM, regardless of the number of trading desks it employs and regardless of the degree of autonomy or separation between each desk.

• Second, a common organizational structure utilized by CBOE market makers involves a common financial backer providing capital to multiple independent, unaffiliated market makers. Each of these market makers trades independently and has its own profit-loss account that is separate and distinct from that of the other market makers receiving financial backing from the same entity. Without an aggregation unit exception, these independent market makers could be viewed as affiliated and thus be precluded from being RMMs in the same classes.

• Third, given the rapidly escalating costs of acquiring sophisticated quoting technology, many market makers, in an effort to reduce their operating costs, have pooled resources to acquire such technology. Despite the shared expenses and pooled resources, these market makers continue to operate independently with their own separate profit-loss accounts, which are unaffected by the profitability (or lack thereof) of others with whom they have shared costs/pooled resources. Without the ability for each market maker to be treated as an aggregation unit, these market makers would be precluded from trading as RMMs within the same classes.

In this regard, CBOE proposes to allow multiple aggregation units to operate as RMMs in the same class provided they comply with the following criteria:[16]

• The member or member firm has a written plan of organization that identifies each aggregation unit, specifies its trading objective(s), and supports its independent identity. The independence of aggregation units may be evidenced by separate management structures, location, business purpose, or separate profit-and-loss treatment within the member firm. Each aggregation unit must maintain all trading activity of that aggregation unit in a segregated account, which would be reported to the Exchange as such.

• Each aggregation unit must operate independently of other aggregation units of the member or member firm. Moreover, all traders in an aggregation unit may pursue only the trading objectives or strategy(ies) of that aggregation unit and may not transmit or otherwise share information relating to those trading objectives or strategies to the member's or member firm's other aggregation units. The member or member firm may have risk management personnel outside of the RMM aggregation units view the positions of the multiple RMMs within the entity and direct position adjustments for risk management purposes. However, such persons may not transmit information to traders in an RMM aggregation unit about the trading strategies, objectives, or positions of another RMM aggregation unit.[17] Prior to being approved in an RMM capacity, each member or member organization operating multiple Aggregation Units would be required to certify that it is aware of these prohibitions, that it would comply with these prohibitions, and that it would ensure continued compliance with these prohibitions.

• Individual traders are assigned to only one aggregation unit at any time; and

• The member or member firm as part of its compliance and/or internal audit routines establishes and maintains surveillance and audit procedures that facilitate the review and surveillance programs of the firm and CBOE to ensure the independent operation of the separate aggregation units operating as RMMs. As part of these routines, the member or member firm must retain written records of information concerning the aggregation units, including, but not limited to, trading personnel, names of personnel making trading decisions, unusual trading activities, disciplinary action resulting from a breach of the member or member firm's systems firewalls and information-sharing policies, and the transfer of securities between the members or member firm's aggregation units, which information would be promptly made available to the Exchange upon its request. The member or member firm must promptly provide to the Exchange a written report at such time there is any material change with respect to the aggregation units, at which point the Exchange would reexamine its status.

The Commission believes that the proposed rules are designed to ensure that affiliated RMMs are sufficiently independent to allow them to operate as separate RMMs. The Commission believes such separation in important because, as stated above, CBOE's rules allocate trades among market makers quoting at the same price based, in part, on an equal allocation methodology unrelated to the size of each market makers quote. Thus, multiple RMMs at the same firm could be used to increase total allocation to that firm without a commensurate increase in the total size of its quote. The Commission notes that the proposed rule obligates the Exchange to conduct surveillance to ensure the independent operation of the multiple units operating as RMMs.

C. Integrated Market Making and Side-by-Side Market Making

RMMs who effect transactions in a particular option may be affiliated with market makers or specialists who trade the underlying security (*i.e.,* integrated market making). The Exchange has

[15] As part of the pilot program, CBOE represents that it would confidentially provide the Commission with data on: (1) The size of orders that RMMs and affiliated market makers both trade with electronically; (2) the price and size of the RMM's and the affiliated market maker's respective quotes; (3) the price and size of quotes of other participants in classes where an RMM and an affiliate are quoting; and (4) a breakdown of how orders are allocated to the RMM, the affiliated market maker, and any other participants. The Commission will use this data to consider whether the practice of allowing a member organization to receive more of an allocation of orders based solely on the number of market-makers that it has quoting in an option class is unfairly discriminatory in any way to other quoting market participants, and to determine whether to extend or permanently approve this practice.

[16] The Exchange based these criteria on the criteria contained in Regulation SHO, which was recently adopted by the Commission. Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (File No. S7–23–03).

[17] Senior risk management personnel are prohibited from engaging in any of the following activities with respect to the Aggregation Units they oversee: (i) Establishing quoting parameters for any trader including but not limited to delta and volatility values; (ii) directing the submission of specific quotes by any trader; or (iii) directing the timing of a trader's trading activities with anything other than general, nonspecific timeframes.

indicated that CBOE Rule 4.18, which governs the use of material, non-public information would apply to RMMs. The Exchange represents that this rule would require RMMs to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information by such member with any affiliates that may act as a specialist or market maker in any security underlying the options for which the CBOE member acts as an RMM.[18] The Commission believes that the requirement that there be an information barrier between the RMM and its affiliates with respect to transactions in the option and the underlying security serve to reduce the opportunity for unfair trading advantages or misuse of material, non-public information.

D. Limitations on Access Due to Systems Constraints

Because of limited systems bandwidth capacity, the Exchange proposes to limit the number of members quoting electronically in each product traded on Hybrid or Hybrid 2.0. The number of members permitted to quote in each product is specified in proposed CBOE Rule 8.3A.01.[19] The methodology for determining which members would be able to quote electronically in a product is governed by proposed CBOE Rule 8.3A(a)–(c).

The CBOE proposes that the DPM and e-DPMs (if applicable[20]) assigned to the product on January 6, 2005,[21] and market makers who: (1) Are in good standing with the Exchange; and (2)(i) have transacted at least 80% of their Market-Maker contracts and transactions in-person in each of the three immediately preceding calendar months prior to January 6, 2005 in option products traded in the trading station; or (ii) were physically present in the trading station acting in the capacity of a market maker on January 6, 2005, would be entitled to quote electronically in those products for as long as they maintain an appointment of those products.[22]

All other market makers, RMMs, and approved e-DPMs that request the ability to submit quotes electronically in the subject product would be entitled to quote electronically in that product in the order in which they so request provided the number of members quoting electronically in the product does not exceed the CQL. When the number of members in the product quoting electronically equals the CQL, all other members requesting the ability to quote electronically in that product would be wait-listed in the order in which they submitted the request.

The waiting list would operate based on time priority. When the product can accommodate another electronic quoter (whether due to attrition or an increase in the CQL), the member at the ''top'' of the list (*i.e.,* the member that has been on the waiting list the longest amount of time) would have priority. Once a member is wait-listed, the Exchange may not alter his/her position on the wait-list other than to improve such position (*i.e.,* the Exchange may not place other members ahead of a previously wait-listed member). If a wait-listed member is offered, yet refuses, the ability to quote electronically in the subject product, the member would be removed from that waiting list.

With respect to a product that is added to the Hybrid 2.0 Platform after January 6, 2005, the DPM and e-DPMs appointed to the product would also be entitled to quote electronically. All market makers quoting in the product prior to its addition to the Hybrid 2.0 Platform would be entitled to quote electronically provided that: (1) They have transacted at least 80% of their market maker contracts and transactions in-person in each of the three immediately preceding calendar months prior to the product being added to the Hybrid 2.0 Platform in option products traded in the trading station; or (2) they were physically present in the trading station acting in the capacity of a market maker on the day prior to the product being added to the Hybrid 2.0 Platform. The Exchange believes that these standards, which also are contained in paragraph (a) of this rule, would ensure that market makers that maintained a presence in the class prior to its conversion to the Hybrid 2.0 Platform would be guaranteed the ability to quote electronically upon conversion to Hybrid 2.0. If at the time a product is added to the Hybrid 2.0 Platform the aggregate number of DPMs, e-DPMs, and market makers entitled to quote electronically in the product exceeds the CQL, then the product would have an ''increased CQL,'' as described in proposed Interpretations and Policies .01(a). Reduction of any ''increased CQL'' would be in accordance with the procedures described in proposed Interpretations and Policies .01(a).

All other members would be entitled to quote electronically in that product in the order in which they so request provided the number of members quoting electronically in the product does not exceed the CQL. When the number of members quoting electronically in the product equals the CQL, all other members would be wait-listed in the order in which they request the ability to quote electronically. The wait-list would operate as described in proposed CBOE Rule 8.3A(a).

Finally, with respect to a new product that commences trading on the Hybrid Trading System after January 6, 2005, the assigned DPM would be entitled to quote electronically. Thereafter, all other members would be entitled to quote electronically in that product in the order in which they so request provided the number of members

[18] Telephone conversation between Stephen M. Youhn, Managing Senior Attorney, and Elizabeth King, Associate Director, Division of Market Regulation, March 10, 2005. *See also* Exchange Act Release No. 47628 (Apr. 10, 2003), 68 FR 17697 (order approving CBOEdirect).

[19] CBOE proposes that the CQL for all products trading on the Hybrid Trading System would be twenty-five (25).The CQLs for products trading on the Hybrid 2.0 Platform would vary based on trading volume over the preceding calendar quarter. The CQL for all products newly-listed on the Exchange after January 6, 2005 would be 25 until such time that the CQL increases in accordance with Rule 8.3A.01. The Exchange would announce all changes regarding CQLs to the membership via Information Circular. The Exchange may increase the CQL levels by submitting to the SEC a rule filing pursuant to Section 19(b)(3)(A) of the Act. The Exchange may decrease the CQL levels established above upon SEC approval of a rule filing submitted pursuant to Section 19(b)(2) of the Act.

When exceptional circumstances warrant, the President of the Exchange (or in his absence his designee, who must be a Senior Vice President of the Exchange or higher) may increase the CQL for an existing or new product. ''Exceptional circumstances'' refers to substantial trading volume, whether actual or expected (*e.g.,* in the case of a new product or a major news announcement). The Exchange does not intend for this discretion (*i.e.,* to increase the CQL) to be exercised on an intra-day basis. Rather, the primary instance for which the Exchange anticipates this discretion being exercised is for the addition of new products to Hybrid or Hybrid 2.0 for where the standard CQL is not high enough to accommodate the anticipated trading volume and member demand. When the CQL increases pursuant to the President exercising his authority in accordance with this paragraph, members on the wait-list (if applicable, with respect to a product already trading on Hybrid), would have first priority and remaining capacity would be filled on a time priority basis. Upon cessation of the exceptional circumstances, the President (or his designee), in his discretion, may determine to reduce the CQL. Any reduction in the CQL must be undertaken in accordance with the procedure established for lowering the ''increased CQL.'' Any actions taken by the President of the Exchange pursuant to this paragraph (to increase or decrease the CQL) would be submitted to the Commission in a rule filing pursuant to Section 19(b)(3)(A) of the Act.

[20] Non-Hybrid 2.0 classes do not have e-DPMs.

[21] The Commission understands that the CBOE currently intends to file a proposed rule change to change the January 6, 2005 date to a later date.

[22] CBOE represents that the practical effect of this rule is to ensure that the DPM, all market makers, and all e-DPMs would be guaranteed the ability to quote electronically in products trading at their primary trading stations as of January 6, 2005. CBOE further represents that there were no products as of this date for which the number of members quoting electronically exceeded the CQL for that product.

quoting electronically does not exceed the CQL. When the number of members quoting electronically in the product equals the CQL, all other members would be wait-listed in the order in which they request the ability to quote electronically. The wait-list would operate as described in proposed CBOE Rule 8.3A(a).

The Commission believes that CBOE's proposal to limit the number of market makers quoting in each options class is not unfairly discriminatory and is otherwise consistent with the Act.

E. Obligations of RMMs

The Exchange proposes to amend CBOE Rule 8.7 to clarify the obligations applicable to RMMs. RMMs would not be able to quote in open outcry. Accordingly, the Exchange proposes to amend paragraph (b)(iii) to specify the permissible methods by which in-crowd market makers and RMMs may quote or submit orders.

The Exchange also proposes to amend paragraph (d) of CBOE Rule 8.7, Market Making Obligations Applicable in Hybrid Classes, to exclude RMMs from the application of this paragraph. RMMs instead would be subject to the obligations contained in new paragraph (e), which are based on the Hybrid obligations in CBOE Rule 8.7(d). Specifically, RMMs would be required to provide continuous two-sided, 10-up, legal-width quotations in 60% of the series of their appointed classes.[23] The Exchange would be permitted to consider exceptions to this quoting requirement based on demonstrated legal or regulatory requirements or other mitigating circumstances (e.g., excused leaves of absence, personal emergencies, or equipment problems). In addition, proposed CBOE Rule 8.4(f) provides that RMMs are subject to CBOE Rule 8.7.03A with respect to trading in appointed classes. CBOE Rule 8.7.03A requires at least 75% of a Market-Maker's total contract volume (measured quarterly) be in his/her appointed classes. RMMs may not enter quotations in option classes that are not included within their appointments although they may submit orders in non-appointed classes.

The Commission believes that these obligations for RMMs are consistent with the Act. In particular, the Commission believes that RMMs' affirmative obligations are sufficient to justify the benefits they receive as market makers.[24] In this regard, the Commission believes that CBOE rules impose such affirmative obligations on RMMs.

F. Priority and Allocation of Trades for CBOE Hybrid System

The Exchange proposes to amend certain portions of CBOE Rule 6.45A regarding allocation of trades on Hybrid. The first change is to expand the introductory paragraph definition of ''market participant'' to include RMMs. The second proposed change is to clarify in paragraph (a), Allocation of Incoming Electronic Orders, that market participants may enter quotes or orders and receive allocations pursuant to the Ultimate Matching Algorithm.

The third proposed change is to amend paragraph (b), Allocation of Orders Represented in Open Outcry, to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. This is consistent with the prohibitions in CBOE Rules 8.4 and 8.7 that prevent an RMM from trading in open outcry. The Exchange also proposes to limit the duration of paragraph (b) to six months from the date of approval of this proposal, unless otherwise extended.

The Commission believes that the trade allocation algorithm that would apply to RMMs is consistent with the Act. The Commission believes that treating RMMs and other CBOE Hybrid market participants the same under CBOE Rule 6.45A(a) should encourage RMMs to quote competitively.

G. CBOE Membership Rules

CBOE proposes to amend CBOE Rule 3.2 to make clear that a member is deemed to have an authorized trading function if the member is approved to act as a nominee or person registered for an RMM organization. This would ensure under CBOE Rule 3.9(g) that the RMM nominee completes CBOE's Member Orientation Program and passes CBOE's Trading Member Qualification Exam. The proposed amendments to CBOE Rules 3.2 and 3.3 would also clarify that a member may elect membership status as an RMM.

CBOE also proposes to amend CBOE Rule 3.8(a)(ii), which currently states that ''if the member organization is the owner or lessee of more than one such membership, the organization must designate a different individual to be the nominee for each of the memberships (except that this subparagraph would not apply to memberships designated for use in an e-DPM capacity pursuant to CBOE Rule 8.92 by a member organization approved as an e-DPM).'' Proposed CBOE Rule 3.8.02 would accommodate the creation of RMMs by allowing a member organization to designate one individual to be the nominee of the memberships that are designated for use in an RMM capacity and an e-DPM capacity, provided that a member organization may not have more than one RMM appointment in an option class (except to the extent provided in CBOE Rule 8.4(c)) and may not have an RMM appointment in an option class in which the organization serves as a DPM, e-DPM, or Market-Maker on the Exchange (except to the extent provided in CBOE Rule 8.4(c)).

The Commission believes that this exception to the general rule that a member organization must designate a different individual to be the nominee for each of the memberships would not be inappropriate given that RMMs operate from locations outside of the trading crowds for their applicable option classes, thereby making it possible for a member to act as an nominee on more than one membership.[25]

Proposed CBOE Rule 3.8.02(ii) would also permit an individual to act as a nominee of an organization with respect to one membership utilized in an RMM capacity and a membership not utilized in an RMM or e-DPM capacity in order to allow the nominee to use those memberships to simultaneously trade as an in-crowd Market-Maker and in an RMM capacity (but not in the same classes), provided that the RMM trading activity of the nominee is from a location other than the physical trading station for any of the classes traded by the nominee in an RMM capacity.

The Commission believes that this provision is reasonable and should accommodate members who choose to take advantage of their remote market making privileges while on the Exchange floor.

[23] If the underlying primary market disseminates a 100-share quote, an RMM's undecremented quote may be for as low as 1-contract (''1-up''), however, this ability is expressly conditioned on the process being automated (*i.e.,* an RMM may not manually adjust its quotes to reflect 1-up sizes). Quotes must automatically return to at least 10-up when the underlying primary market no longer disseminates a 100-share quote. RMMs that have not automated this process may not avail themselves of the relief provided herein. The ability to quote 1-up would operate on a pilot basis and would terminate on August 17, 2005, which is the same expiration date contained in CBOE Rules 8.7(d)(i)(B) and (d)(ii)(B) for Hybrid trading.

[24] For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange. *See* 12 CFR 221.5(c)(6).

[25] The Commission notes that it would not be possible for an in-crowd market participant to act as nominee on more than one membership because such participant would be unable to physically be present in more than one trading crowd.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[26]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–2004–75), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–1185 Filed 3–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51365; File No. SR–FICC–2004–15]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing of an Amended Proposed Rule Change Relating to Trade Submission Requirements and Pre-Netting

March 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 4, 2005, The Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') an amendment to a proposed rule change as described in Items I, II, and III below. Prior to being amended the proposed rule change was published in the **Federal Register** on November 4, 2004.[2] The Commission is publishing this notice to solicit comments on the proposed rule change as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As previously noticed, the proposed rule change would amend the rules of FICC's Government Securities Division (''GSD'') to broaden its trade submission requirements and to prohibit pre-netting activities of certain affiliates of its members. As amended, the proposed rule change would also require netting members to report foreign affiliate trades to FICC.

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

In its filing with the Commission, FICC 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. FICC 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 proposed rule change as originally filed would require GSD members of FICC to submit data on trades executed or whose settlement is cleared and guaranteed by affiliates of GSD members that are registered broker-dealers, banks, or futures commission merchants organized in the U.S. Because the proposed rule would define a covered affiliate as an entity organized in the U.S., the rule would not apply to trades executed by non-U.S. affiliates of GSD members.

FICC has filed an amendment to the proposed rule change that would require a netting member to report foreign affiliate trades to FICC. The trades would be reported to FICC on an annual basis in the format and within the timeframe specified by guidelines to be issued by FICC. The reporting requirement would not apply to foreign affiliate trades of a foreign affiliate that has executed less than an average of 30 or more foreign affiliate trades per business day during any one-month period within the prior year.

The amendment proposes to add definitions of ''foreign affiliate'' and ''foreign affiliate trade'' to GSD's rules. A ''foreign affiliate'' would be defined as an affiliate of a netting member that is not itself a netting member and is a foreign person. A ''foreign affiliate trade'' would be defined as a trade executed by a ''foreign affiliate'' of a netting member that satisfies the following criteria: (i) The trade is eligible for netting pursuant to GSD's rules and (ii) the trade is executed with another netting member, with a covered affiliate, or with a ''foreign affiliate'' of another netting member. ''Foreign affiliate trade'' would not include a trade that is executed between a member and its affiliate or between affiliates of the same member. For purposes of this definition, the term ''executed'' shall include trades that are cleared and guaranteed as to their settlement by the foreign affiliate.

The proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder applicable to FICC because the proposed rule change should reduce systemic risk in the government securities marketplace and therefore facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.

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

FICC does not believe that the proposed rule change would have any impact or impose any burden on competition.

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

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

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

Within thirty five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

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. Comments may be submitted by any of the following methods:

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

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

[2] Securities Exchange Act Release No. 50607 (October 29, 2004), 69 FR 64343.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] 15 U.S.C. 78q–1.