Office of Personnel Management.

Kay Coles James,

Director.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27834]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (“Act'')

April 14, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 10, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 10, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70–10215)

Notice of Proposal To Issue Securities; Order Authorizing Solicitation of Proxies

The Southern Company (“Southern''), 270 Peachtree Street, NW., Atlanta, Georgia 30303, a holding company registered under the Public Utility Holding Company Act of 1935, as amended (“Act''), has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 54, 62 and 65 under the Act.

Southern proposes, from time to time through May 26, 2014, to issue shares of its common stock, par value $5.00 per share (“Common Stock''), in accordance with the Outside Directors Stock Plan for The Southern Company and Certain of its Subsidiaries (“Plan''). The Plan is a consolidation of the Outside Directors Stock Plan for The Southern Company (“Southern Stock Plan'') and the Outside Directors Stock Plan for Subsidiaries of The Southern Company (“Subsidiaries Stock Plan'').

The Board of Directors of Southern has adopted the Plan, subject to stockholder approval. The Plan is intended to provide a mechanism for non-employee directors to increase their ownership of Common Stock automatically and thereby further align their interests with those of Southern's stockholders.

The Plan will be administered by Southern's Governance Committee (“Committee''), which will have exclusive authority to interpret the Plan. The Plan provides for a portion of the retainer fee for non-employee directors of Southern and any subsidiary of Southern that the Board of Directors of Southern determines to bring under the Plan and that adopts the Plan (“Subsidiaries'') to be paid in unrestricted shares of Common Stock and permits each non-employee director to elect to have all or a portion of the remainder of the director fee to be paid in shares of Common Stock instead of cash. Southern expects that the initial Subsidiaries will be Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company and that the approximate number of participants under the Plan will initially be 50. The portion of the director fee paid in Common Stock to Southern's non-employee directors in accordance with the Plan will automatically be deferred in accordance with the terms of the deferred compensation plan maintained by Southern. The non-employee directors of each Subsidiary may elect to have the portion of the director fee paid in Common Stock in accordance with the Plan deferred in accordance with the terms of the deferred compensation plan maintained by each Subsidiary for its directors.

One million shares of Common Stock and the unissued shares of Common Stock previously authorized and registered for issuance under the Southern Stock Plan and Subsidiaries Stock Plan (approximately 1,700,000 shares) will be available for payment to the participants under the Plan.

The Board of Directors of Southern may terminate or amend the Plan at any time except that without shareholder approval no amendment may be made that would, absent that shareholder approval, disqualify the Plan for coverage under rule 16b–3, as promulgated by the Commission under the Securities and Exchange Act of 1934, as amended. The Plan will terminate May 26, 2014, unless terminated sooner by the Board of Directors.

Southern further proposes to submit the Plan for consideration and action by its stockholders at the annual meeting of such stockholders to be held on May 26, 2004, and to solicit proxies from its stockholders in anticipation of that meeting. In addition, in the event that Southern considers it desirable to do so, it may employ professional proxy solicitors to assist in the solicitation of proxies and pay their expenses and compensation for that assistance, which, it is estimated, will not exceed $10,000.

Approval of the Plan requires the affirmative vote of the holders of a majority of the shares of Common Stock represented in person or by proxy at the annual meeting.

The proposed transactions are subject to rule 53 under the Act, which provides that in determining whether to approve the issue or sale of a security for purposes of financing the acquisition of an exempt wholesale generator (“EWG'') or foreign utility company (“FUCO''), the Commission shall not make certain adverse findings if the conditions set forth in rule 53(a)(1) through (a)(4) are met, and are not otherwise made inapplicable by the existence of any of the circumstances described in rule 53(b).

Southern currently meets all of the conditions of rule 53(a), except for clause (1). At December 31, 2003, Southern's “aggregate investment,'' as defined in rule 53(a)(1), in EWGs and FUCOs was approximately $304 billion, or approximately 5.83% of Southern's “consolidated retained earnings,'' also as defined in rule 53(a)(1), as of December 31, 2003 ($5.213 billion). With respect to rule 53(a)(1), however, the Commission has determined that Southern's financing of investments in EWGs and FUCOs in an amount greater than the amount that would otherwise be allowed by rule 53(a)(1) would not have either of the adverse effects set forth in rule 53(c). (*See* The Southern Company, HCAR No. 16501, (April 1, 1996); and HCAR No. 26646, (January 15, 1997).

In addition, Southern has complied and will continue to comply with the record-keeping requirements of rule 53(a)(2), the limitation of rule 53(a)(3) on the use of operating company personnel to render services to EWGs and FUCOs and the requirements of rule 53(a)(4) concerning the submission of copies of certain filings under the Act to retail rate regulatory commissions. Further, none of the circumstances described in rule 53(b) has occurred. Finally, rule 53(c) is, by its terms, inapplicable since the requirements of paragraphs 53(a) and 53(b) are satisfied.

It appears to the Commission that the declaration, to the extent that it relates to the proposed solicitation of proxies, should be permitted to become effective immediately under rule 62(d).

It is ordered, that the declaration, to the extent that it relates to the proposed solicitation of proxies be, and hereby is, permitted to become effective immediately under rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8964 Filed 4–20–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49563; File No. SR–CBOE–2003–40]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to Options on Certain CBOE Volatility Indexes

April 14, 2004.

I. Introduction

On September 12, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or "Exchange''), filed with 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 to amend certain of its rules to provide for the listing and trading of options on the following volatility indexes: the CBOE Volatility Index ("VIX''), the CBOE Nasdaq 100 Volatility Index ("VXN''), and the CBOE Dow Jones Industrial Average Volatility Index ("VXD''). On November 18, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] On December 22, 2003, the CBOE filed Amendment No. 2 to the proposed rule change.[4]

The proposed rule change was published for comment in the **Federal Register** on November 26, 2003.[5] The Commission received one comment letter from the Chicago Mercantile Exchange ("CME'') on the proposal.[6]

II. Description of the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on the VIX, VXN, and VXD. The calculation of each index is based on a recently developed methodology that builds upon the calculation of the original CBOE Market Volatility Index, which was based on S&P 100 Index option quotes. Introduced by CBOE in September 2003, the revised VIX is an index that uses the quotes of certain S&P 500 Index ("SPX'') option series to derive a measure of the volatility of the U.S. equity market. It provides investors with up-to-the-minute market estimates of expected volatility by extracting implied volatilities from real-time index option bid/ask quotes. The VIX is quoted in percentage points per annum. For example, an index level of 30.34 (the closing value from December 31, 2002) represents an annualized volatility of 30.34%. This new methodology will also be used to calculate VXN and VXD values.

Each index—VIX, VXN, and VXD—will be calculated using real-time quotes of the nearby and second nearby index puts and calls of the SPX, the Nasdaq 100 Index ("NDX''), and the Dow Jones Industrial Index ("DJX''), respectively. For options on each respective volatility index, the nearby index option series are defined as the series with the shortest time to expiration, but with at least eight (8) calendar days to expiration. The second nearby index option series are the series for the subsequent expiration month. Thus, with eight days left to expiration, an index will "roll'' to the second and third contract months. For each contract month, CBOE will determine the at-the-money strike price. It will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at-the-money strike, the less weight that is accorded to the quote. Then, to compute the index level, CBOE will calculate a volatility measure for the nearby options and then for the second nearby options using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.

Strike prices will be set to bracket the index in 2½ point increments; thus, the interval between strike prices will be no less than $2.50. The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick will be 0.10. The proposed options on each index will expire 30 days prior to the expiration date of the options used in the calculation of that index. Exercise will result in delivery of cash on the business day following expiration. VIX, VXN and VXD options will be A.M.-settled. The exercise settlement value will be determined by a Special Opening Quotation ("SOQ'') of each respective volatility index calculated from the sequence of opening prices of the options that comprise that index. The opening price for any series in which there is no trade shall be the average of that option's bid price and ask price as determined at the opening of trading. The exercise-settlement amount is equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100.

The position limits for options on each volatility index will be 25,000 contracts on either side of the market and no more than 15,000 of such contracts may be in series in the nearest expiration month.[7]

Except as modified herein, the Exchange Rules in Chapter XXIV will be applicable to the VIX, VXN, and VXD options. Each volatility index will be

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jim Flynn, Attorney, CBOE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division''), Commission, dated November 18, 2003 ("Amendment No. 1''). Amendment No. 1 revised 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.

[4] *See* letter from Jim Flynn, Attorney, CBOE, to Florence Harmon, Senior Special Counsel, Division, Commission, dated December 18, 2003 ("Amendment No. 2''). Amendment No. 2 made a technical change to a paragraph contained in a sub-section ("Exercise and Settlement'') in Item 3 of the Form 19b–4 originally filed by CBOE and made corresponding changes to Exhibits B, C, and D. Specifically, Amendment No. 2 clarified that "the options on each respective volatility index will expire on the Wednesday immediately prior to the third Friday of the month that immediately precedes the month in which the options used in the calculation of that index expire.''

[5] *See* Securities Exchange Act Release No. 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003).

[6] *See* letter dated December 17, 2003 from Craig S. Donohue, CME, Office of the CEO, to Jonathan G. Katz, Secretary, Commission ("CME Letter'').

[7] This is consistent with CBOE Rule 24.4 (Position Limits for Broad-Based Index Options).