

engaged in manipulative or violative activity.¹⁸

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. CBOE has requested that the Commission grant accelerated approval of the proposed rule change on a pilot basis through November 17, 2004. The Commission notes that the CFE intends to begin trading futures contracts on VIX commencing on Friday, March 26, 2004. Since the VIX futures contracts will be settled using the modified ROS process, accelerated approval of the proposed rule change would allow CFE to inform members of the process by which settlement values would be determined in conjunction with the commencement of trading these products. For these reasons, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,¹⁹ to approve CBOE's proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁰ that the proposed rule change, as amended, (SR-CBOE-2004-11) is hereby approved on an accelerated basis as a pilot program to expire on November 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49472; File No. SR-CBOE-2003-35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Inc. Relating to Non-Aggregation Treatment of Trading Units of Member Firms for Position and Exercise Limits

March 25, 2004.

On August 26, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 issue a regulatory circular containing additional guidance for member firms requesting that one or more of their internal trading units be treated as a separate aggregation unit for purposes of determining aggregate position and exercise limits for a particular option contract. On September 29 2003, the CBOE submitted Amendment No. 1 to the proposed rule change. On January 29, 2004, the CBOE submitted Amendment No. 2 to the proposed rule change. On February 9, 2004 the CBOE submitted Amendment No. 3 to the proposed rule change. The **Federal Register** published the proposed rule change, as amended, for comment on February 19, 2004.³ The Commission received no comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.⁴ In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

general, protect investors and the public interest.

The Commission believes that the proposed rule change establishes reasonable conditions for the Exchange to determine whether separate trading units within the same member firm may receive non-aggregation treatment with respect to position and exercise limits. The Commission notes that the proposed rule change will require that a CBOE member seeking non-aggregation treatment create internal firewalls and information barriers between trading units that are sufficient to prevent the flow of information (*e.g.*, trades, positions, and trading strategies) between trading units that receive non-aggregation treatment and other trading units controlled by the member. In addition, the Commission believes that the proposed rule change should promote accountability of member firms receiving non-aggregation treatment. Moreover, the Commission believes that the procedures that the Exchange employs to consult with members of the Intermarket Surveillance Group before granting non-aggregation treatment to a member should promote consistent determinations of whether or not to grant non-aggregation treatment.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-CBOE-2003-35), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49463; File No. SR-FICC-2004-04]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Technical Corrections

March 24, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 19, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the

¹⁸ See Supplemental ROS Surveillance Procedures, *supra* note 12. CBOE has represented, and the Commission expects, that the Exchange will work with the Commission's Office of Compliance Inspections and Examinations ("OCIE") to finalize any surveillance reports used in connection with the modified ROS opening in a manner acceptable to OCIE. The Commission also expects CBOE to assess its surveillance procedures from time to time to determine whether they are adequate to ensure that market makers do not engage in manipulative or improper trading practices. Further, the Commission expects CBOE to consider whether any additional surveillance procedures are necessary to prevent manipulative or other improper practices.

¹⁹ 15 U.S.C. 78f(b)(5) and 78s(b).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 49213 (February 9, 2004), 69 FR 7829.

⁴ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).