

support of that request, INOH states that upon consummation of the Transaction, Lawrenceburg will constitute its only public utility subsidiary. Both INOH and Lawrenceburg are incorporated under the laws of Indiana, the same State in which all of Lawrenceburg's public utility operations are conducted. All of Lawrenceburg's gas distribution facilities, which compose substantially all of its physical assets, are likewise located in Indiana. Following the consummation of the Transaction, Lawrenceburg, as a "public utility" under Indiana law, will remain subject to extensive regulation by the IURC, with respect to such matters as rates, service and safety standards, accounting, securities issuances, and acquisitions and sales of utility property.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-12995 Filed 6-8-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27853]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 3, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under 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 June 28, 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 June 28, 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 (70-10186)

The Southern Company ("Southern"), 270 Peachtree Street, NW., Atlanta, Georgia, 30303, a registered holding company under the Act; Georgia Power Company ("Georgia Power"), Southern Company Services, Inc. ("SCS"), and Southern Company Energy Solutions, Inc., each located at 241 Ralph McGill Boulevard, NE., Atlanta, Georgia, 30308 and each a wholly-owned subsidiary of Southern; Gulf Power Company ("Gulf Power"), One Energy Place, Pensacola, Florida, 32520 and a wholly-owned utility subsidiary of Southern; Mississippi Power Company ("Mississippi Power"), 2992 West Beach, Gulfport, Mississippi, 39501 and a wholly-owned utility subsidiary of Southern; Savannah Electric and Power Company ("Savannah Power"), 600 Bay Street East, Savannah, Georgia, 31401 and a wholly-owned utility subsidiary of Southern; Alabama Power Company ("Alabama Power"), 600 North 18th Street, Birmingham, Alabama, 35291 and a wholly-owned utility subsidiary of Southern; Southern Company Capital Funding, Inc. ("Capital Funding"), 1403 Foulk Road, Suite 102, Wilmington, Delaware, 19803 and a wholly-owned subsidiary of Southern; Southern Communications Services, Inc., 555 Glenridge Connector, Suite 500, Atlanta, Georgia, 30342 and a wholly-owned subsidiary of Southern; and Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, Alabama, 35242 and a wholly-owned subsidiary of Southern (collectively, "Applicants"), have filed a declaration/application ("Declaration") under sections 6(a), 7, 9(a), 10, and 12(b), 12(c), and 12(f) of the Act and rules 42, 45, 53, and 54 under the Act.

Southern owns the following public utilities: Alabama Power, Georgia Power, Gulf Power, Mississippi Power, Savannah Power, Southern Power Company and Southern Electric Generating Company.

#### I. Current Authority

Southern currently has authority to issue the following securities:

1. Up to 35 million shares of common stock (Holding Company Act Release No. 27323) (December 27, 2000);
2. Up to \$2 billion aggregate principal amount of short-term notes, term loan notes and commercial paper (Holding

Company Act Release No. 27367) (March 28, 2001);

3. Up to 88 million shares of common stock under its dividend reinvestment plan, employee savings plan and employee stock ownership plan (Holding Company Act Release No. 27118) (December 22, 1999). All of the Applicants, except Capital Funding, may purchase Southern common stock to contribute to the employee stock ownership plan for the benefit of their employees;

4. Up to \$160 million aggregate amount of guarantees of the debt or other obligations of SCS (Holding Company Act Release No. 27082) (October 8, 1999); and

5. Up to \$1.5 billion aggregate principal amount of preferred securities, notes, stock purchase contracts and stock purchase units (Holding Company Act Release No. 27134) (February 9, 2000). These securities may also be issued on Southern's behalf by Capital Funding. In connection with these financing transactions, Southern may enter into one or more guarantees or credit support agreements in favor of Capital Funding.

Upon the effectiveness of the order in this filing, Applicants will relinquish their authority to issue securities and engage in the transactions authorized in the orders listed above.

#### II. Overview of Request

Applicants request authorization to engage in the following financing transactions during the period from the effective date of the order in this filing through June 30, 2007 ("Authorization Period"):

1. Southern requests authority to issue and sell from time-to-time up to 35 million shares of its common stock;

2. Southern requests authority to issue and sell from time-to-time unsecured notes to effect short-term, term loan and commercial paper borrowings (collectively, "Institutional Debt") in an aggregate principal amount not to exceed \$3 billion at any time outstanding;

3. Southern requests authority to issue and sell from time-to-time up to 85 million shares of its common stock to its dividend reinvestment plan, employee savings plan, employee stock ownership plan or other similar stock based plans adopted in the future. These shares will be in addition to the common stock proposed to be issued by Southern in paragraph II.1, above.<sup>1</sup> In addition, all of

<sup>1</sup> Under an order dated October 11, 2000 (Holding Company Act Release No. 27246), Southern has existing authority to issue up to 40 million shares

Continued

the Applicants, except Capital Funding, request authority to purchase Southern common stock to contribute to the employee stock ownership plan for the benefit of their employees;

4. Southern requests authority to provide from time-to-time guarantees on behalf or for the benefit of SCS in an aggregate principal amount not to exceed \$330 million at any time outstanding; and

5. Southern and Capital Funding request authority to issue and sell from time-to-time directly shares of their preferred stock and, directly or indirectly preferred securities (including without limitation trust preferred securities) ("Preferred Securities"), as defined below, equity-linked securities ("Equity-Linked Securities"), as defined below, and/or long-term debt ("Long-term Debt"), as defined below, in an aggregate principal amount not to exceed \$1.5 billion. Southern and Capital Funding request authority to issue and sell Preferred Securities indirectly through one or more financing subsidiaries. Any securities issued by Capital Funding, or any Preferred Securities issued by a financing subsidiary, may be guaranteed by Southern. Any securities may be convertible into common stock of Southern, provided that the value of the common stock issuable upon conversion may not exceed \$2 billion in the aggregate. The common stock issuable upon conversion will be in addition to the common stock proposed to be issued by Southern in paragraphs II.1 and II.3, above.

### III. Financing Parameters

Applicants propose that the following general terms will be applicable where appropriate to the financing transactions requested:

1. *Effective Cost of Money.* The effective cost of capital on Long-term Debt, preferred stock, Preferred Securities, Equity-linked Securities and Institutional Debt will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event

will the effective cost of capital (a) on any series of Long-term Debt exceed 700 basis points over a U.S. Treasury security having a remaining term equal to the term of the series, (b) on any series of Institutional Debt exceed 700 basis points over the London Interbank Offered Rate for maturities of less than one year, and (c) on any series of Preferred Stock, Preferred Securities or Equity-linked Securities exceed 700 basis points over a U.S. treasury security having a remaining term equal to the term of the series.

2. *Maturity.* The maturity of Long-term Debt and Preferred Securities will be between one and 50 years after the issuance. Equity-linked Securities will be redeemed or mature no later than 50 years after the issuance, unless converted into common stock. Preferred stock will be redeemed no later than 50 years, unless it is perpetual in duration.

3. *Issuance Expenses.* The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of (a) Long-term Debt and Institutional Debt will not exceed 7% of the principal or total amount of the securities being issued and (b) preferred stock, common stock, Preferred Securities or Equity-linked Securities will not exceed 7% of the principal or total amount of the securities being issued. However, no commission or fee will be payable in connection with the issuance and sale of commercial paper, except for a commission, payable to the dealer, not to exceed one-eighth of one percent per annum in respect of commercial paper sold through the dealer as principal.

4. *Common Equity Ratio.* At all times during the Authorization Period, Southern represents that it, and each of its public utility subsidiaries, will maintain a common equity ratio of at least thirty percent of their consolidated capitalization (common equity, preferred stock, long-term and short-term debt) as reflected in its most recent Form 10-K and Form 10-Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date, unless otherwise authorized.

5. *Investment Grade Ratings.* Southern and Capital Funding represent that no guarantees or securities, other than common stock, commercial paper or short-term bank debt (with a maturity of one year or less), may be issued in reliance upon the authorization that may be granted by the Commission, unless upon original issuance (a) the security to be issued, if rated, is rated investment grade; (b) all outstanding securities of the issuer that are rated are

rated investment grade; and (c) all outstanding securities of Southern that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3-1 under the Securities Exchange Act of 1934, as amended. Southern and Capital Funding also request the Commission to reserve jurisdiction over the issuance of any guarantees or securities that do not satisfy these conditions.

6. *Use of Proceeds.* Applicants state that the proceeds from the issuance or sale of securities in the proposed transactions will be used by Southern for general corporate purposes, to acquire the securities of associate companies and to acquire interests in other businesses, as permitted under the Act, including interests in "exempt wholesale generators" ("EWGs"), "energy related companies" under Rule 58 and "foreign utility companies" ("FUCOs"), in transactions permitted under Act, and for other lawful purposes. Southern does not seek in this proceeding any increase in the amount it is permitted to invest in EWGs and FUCOs.<sup>2</sup> However, no proceeds will be used to acquire interests in other businesses or the securities of associate companies unless the financing is consummated in accordance with Commission order or is exempt from the Act. The proceeds of any financing by Capital Funding or a financing subsidiary will be remitted, paid as a dividend, loaned or otherwise transferred to Southern. The proceeds realized by SCS from borrowings guaranteed by Southern will be used to fund the general requirements of the business of SCS including the possible refunding of outstanding indebtedness.

### IV. Financial Condition

Applicants state that the ratings of the securities issued by Southern and Capital Funding are:

Southern senior unsecured debt—  
Moody's: A3, S&P: A—  
Southern commercial paper, short term—Moody's: P1, S&P: A1—  
Capital Funding senior unsecured debt—Moody's: A3, S&P: A—

### V. Description of Specific Types of Financings

1. *Common Stock.* Southern proposes to issue and sell up to 35 million shares

of its common stock in accordance with the Southern Company Performance Stock Plan through February 17, 2007. Under an order dated June 7, 2001 (Holding Company Act Release No. 27416), Southern has existing authority to issue up to 30 million shares of its common stock in accordance with the Southern Company Omnibus Incentive Compensation Plan through May 22, 2011. The authority granted in these orders will remain in place and will not be affected by the authority that may be granted to the Applicants in the present matter.

<sup>2</sup> Under an order dated April 1, 1996, Southern is authorized to invest up to 100% of its consolidated retained earnings in EWGs and FUCOs (Holding Company Act Release No. 26501).

of common stock in ordinary regular-way transactions in the auction market on the floor of the New York Stock Exchange, or any regional exchange on which Southern's common stock may be admitted to trading privilege, in block transactions on exchanges or in the over-the-counter market, in which a broker or dealer may act as a principal for its own account and in "fixed-price offerings" off the floor of the exchanges, or "special offerings" and "exchange distributions" in accordance with the rules of the exchanges. Public distributions may be as a result of private negotiations with underwriters, dealers or agents, or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. The sale of the common stock will be made at market prices prevailing at the time of sale in the case of transactions on exchanges and at prices negotiated by the broker or dealer and related to prevailing market prices in the case of over-the-counter transactions.

2. *Institutional Debt.* Southern proposes to issue and sell from time to time unsecured Institutional Debt in an aggregate principal amount at any time outstanding not to exceed \$3 billion. These borrowings will be evidenced by short-term and/or term loan notes, dated as of the date of the borrowings, and maturing not more than seven years after the date of issue, or "grid" short-term and/or long-term notes, evidencing all outstanding borrowings from each lender, dated as of the date of the initial borrowings, and maturing not more than seven years after the date of issue. Southern proposes to issue commercial paper in the form of promissory notes with varying maturities not to exceed one year. The commercial paper maturities may be subject to extension to a final maturity not to exceed 390 days. Actual maturities will be determined by market conditions, the effective interest costs and Southern's anticipated cash flow, including the proceeds of other borrowings, at the time of issuance.

3. *Common Stock Issuable under Stock-based Plans.* Southern proposes to issue up to 85 million shares of common stock under several stock-based plans as described below and any similar stock based plans adopted in the future (collectively, "Plans"). The common stock issuable under the Plans would be in addition to the common stock issuable under paragraph V.1 above.

• *Southern Investment Plan.* The Southern Investment Plan ("SIP")

provides shareholders of record of Southern's common stock with a means of purchasing additional shares through the reinvestment of cash dividends and/or through optional cash payments. In addition, the SIP has a direct purchase feature that enables other eligible investors to become participants by making initial cash payments for the purchase of common stock. Shares of common stock are purchased under the SIP, at the option of Southern, from newly issued shares or shares purchased on the open market. The price per share for shares purchased on the open market will be the weighted average price paid to acquire the shares, excluding broker commissions. When shares are purchased from Southern using cash dividends, the price per share generally will be equal to the average of the high and low sale prices on the dividend payment date. When shares are purchased from Southern with the investor's cash payments, the price per share generally will be equal to the average of the high and low sale prices on the 10th or 25th of each month, as applicable.

• *Employee Savings Plan.* Under the Employee Savings Plan ("Savings Plan"), each employee of Southern's subsidiaries may generally contribute a certain percentage of his compensation to an account administered on his behalf under the Savings Plan. These funds, together with funds contributed by the employer, would be invested in one or more of several funds, including a stock fund consisting of Southern's common stock. Investment purchases for the funds may be made either on the open market or by private purchase, provided that no private purchase may be made of common stock of Southern at a price greater than the last sale price or the highest current independent bid price, whichever is higher, for the stock on the New York Stock Exchange, plus any applicable commission. In addition, common stock of Southern may be purchased directly from Southern under the SIP or under any similar plan made available to holders of record of shares of common stock of Southern, at the purchase price provided for in that plan.

• *Employee Stock Ownership Plan.* The purpose of the Employee Stock Ownership Plan ("ESOP") is to enable eligible employees of SCS and other affiliates or subsidiaries of Southern that adopt the ESOP ("Employing Companies") to share in the future of Southern, to provide participants with an opportunity to accumulate capital for their future economic security and to enable participants to acquire Southern common stock. All of the Applicants except for Capital Funding are currently

Employing Companies. The ESOP permits the Employing Companies to contribute cash or common stock in an amount or under a formula that SCS will determine in its sole and absolute discretion. Cash contributions would be used to purchase common stock at market value, as determined by SCS. Cash dividends paid on the contributed common stock allocated to participating employees' accounts generally would be reinvested in additional shares of common stock, unless the employee elects to have the dividends distributed to him.

4. *Guarantees.* SCS provides certain services for Southern and its associate companies in the Southern electric system. Southern proposes to guarantee indebtedness or other obligations incurred by SCS in an aggregate amount not to exceed \$330 million at any time outstanding. Applicants state that security issuances by SCS are exempt from prior Commission review in accordance with rule 52(b) under the Act, as they will be in the routine course of its business.

SCS may issue and sell notes ("SCS Notes") to lenders other than Southern. The SCS Notes would be issued under agreements with lenders and may be guaranteed by Southern as to principal, premium, if any, and interest. The SCS Notes may have terms of up to 50 years, contain sinking funds and bear interest at a rate or rates not to exceed 700 basis points per annum over the rate for United States Treasury securities of corresponding maturity at the time the lenders commit to purchase the particular issue. SCS may engage an agent to place the SCS Notes for a commission based upon the principal amount borrowed.

SCS also may effect short-term or term-loan borrowings under one or more revolving credit commitment agreements. Short term borrowings would have a maximum maturity of one year; term loans would have a maximum maturity of ten years. It is expected that the borrowings would be evidenced by a "grid" promissory note to be dated the date of the initial borrowing and the date of each borrowing thereafter when a "grid" short-term or term-loan note, as the case may be, is not outstanding. Borrowings would bear interest at rates to be negotiated with the lending financial institution or institutions. In addition, it is expected that SCS will be obligated to pay fees in connection with the credit arrangements. Interest rates and fees will be negotiated based upon prevailing market conditions.

SCS also may effect borrowings from certain banks and other institutions.

Institutional borrowings will be evidenced by notes to be dated as of the date of the borrowings and to mature in not more than ten years after the date of borrowing or by "grid" notes evidencing all outstanding borrowings from each lender to be dated as of the date of the initial borrowing and to mature in not more than ten years after the date of borrowing. Generally, borrowings will be prepayable in whole, or in part, without penalty or premium, and will be at rates to be negotiated with the lending institutions based upon prevailing market conditions. SCS also may negotiate separate rates for, and/or agree not to prepay, particular borrowings if it is considered more favorable to SCS.

Southern further proposes that it may guarantee obligations incurred by SCS in connection with installment purchases, sale-leasebacks, leases or other acquisitions of equipment or other assets.

5. *Preferred Stock, Preferred Securities, Equity-linked Securities and Long-term Debt.* Southern and Capital Funding request authority to issue and sell from time to time, directly, preferred stock, and directly or indirectly through one or more financing subsidiaries, Preferred Securities, Equity-linked Securities and/or Long-term Debt in an aggregate amount at any time outstanding not to exceed \$1.5 billion. Any of these securities may be convertible into common stock of Southern, provided that the value of the common stock issuable upon conversion may not exceed \$2 billion in the aggregate, and will be in addition to the common stock authorized for issuance under paragraphs V.1 and V.3 above.

*Preferred Stock.* Southern and Capital Funding propose to issue and sell from time to time shares of their preferred stock. Any issue of preferred stock will have a specified par or stated value per share and, in accordance with applicable state law, will have voting powers (if any), designations, preferences, rights and qualifications, limitations or restrictions as shall be stated and expressed in the resolution or resolutions providing for the issue adopted by the board of directors of Southern or Capital Funding, as the case may be, under authority vested in it by the provisions of its certificate of incorporation. The foregoing may include rights of conversion or exchange into common stock of Southern.

*Preferred Securities.* Southern and Capital Funding request the authority to issue, directly or indirectly through one or more Financing Subsidiaries (as defined below) preferred securities

(including, without limitation, trust preferred securities) ("Preferred Securities"). Preferred Securities may be issued in one or more series with rights, preferences and priorities as may be designated in the instrument creating each series, as determined by the board of directors of Southern or Capital Funding, as applicable. Dividends or distributions on the Preferred Securities will be made periodically and to the extent funds are legally available for that purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Southern proposes to guarantee certain payments made by a Financing Subsidiary in regard to the issuance of any Preferred Security.

Southern expects that one or more statutory or business trusts or other finance subsidiary (each a "Financing Subsidiary") established by Southern and/or Capital Funding would issue the Preferred Securities.<sup>3</sup> Southern proposes to organize one or more separate Financing Subsidiaries as a statutory trust of the State of Delaware or other comparable trust in any jurisdiction considered advantageous by Southern or any other entity or structure, foreign or domestic, that is considered advantageous by Southern. Southern requests that the Commission reserve jurisdiction over the use of a foreign entity as a Financing Subsidiary. The Financing Subsidiary would lend, dividend or otherwise transfer to Southern or Capital Funding, as applicable, the proceeds of the Preferred Securities it issues, together with the equity contributed to the Financing Subsidiary.<sup>4</sup> In turn, Capital Funding would lend, dividend or otherwise transfer the proceeds to Southern. Southern or Capital Funding would issue guarantees<sup>5</sup> related to: (a)

<sup>3</sup> If a Financing Subsidiary is organized as a limited liability company, Southern or Capital Funding may also organize a second special purpose subsidiary under Delaware or other state law ("Investment Subsidiary") to acquire and hold Financing Subsidiary membership interests, so as to comply with any requirement under any applicable law that a limited liability company have at least two members. Similarly, if any Financing Subsidiary is organized as a limited partnership, an Investment Subsidiary may be organized to act as the general partner of the Financing Subsidiary. If a Financing Subsidiary is organized as a limited partnership, Southern may acquire, directly or indirectly through the Investment Subsidiary, a limited partnership interest in the Financing Subsidiary, in order to ensure that the Financing Subsidiary will have a limited partner to the extent required by applicable law.

<sup>4</sup> The terms of any loan to Southern of the proceeds from the issuance of Preferred Securities would mirror the terms of those Preferred Securities.

<sup>5</sup> Guarantees issued by Capital Funding would in turn be supported by Southern's own credit.

Payment of dividends or distributions on the Preferred Securities of any Financing Subsidiary, if, and to the extent that, the Financing Subsidiary has funds legally available for this purpose; (b) payments to holders of the Preferred Securities of amounts due upon liquidation of the Financing Subsidiary or redemption of its Preferred Securities; and (c) certain additional amounts that may be payable in respect of the Preferred Securities.

*Equity-linked Securities.* Southern or Capital Funding may also issue and sell equity-linked securities, typically in the form of stock purchase units, which combine a security with a fixed obligation (e.g., Long-term Debt, Preferred Securities, preferred stock or other debt obligations of third parties, including U.S. Treasury securities) with a stock purchase contract that is exercisable (either mandatorily or at the option of the holder) within a relatively short period (e.g., one to six years after issuance) ("Equity-linked Securities"). Any securities issued by Capital Funding or a trust or other finance subsidiary may be guaranteed by Southern. In addition, Southern proposes to issue and sell stock purchase contracts ("Stock Purchase Contracts") either separately or as part of units ("Stock Purchase Units"). The Stock Purchase Units would consist of (a) Stock Purchase Contracts and (b) Preferred Securities, Long-term Debt and/or debt obligations of third parties.

*Long-term Debt.* Southern and Capital Funding propose that, in addition to, or as an alternative to, any Preferred Securities financing, Southern or Capital Funding may issue and sell notes directly to investors. It is proposed that any notes so issued will be unsecured, may be either senior or subordinated obligations of Southern or Capital Funding, as the case may be, may be convertible or exchangeable into common stock of Southern or preferred stock and may have the benefit of a sinking fund ("Long-term Debt"). Long-term Debt of Capital Funding will have the benefit of a guarantee or other credit support by Southern and may be subject to redemption or remarketing or a put option. Southern or Capital Funding will not issue Long-term Debt unless it has evaluated all relevant financial considerations (including, without limitation, the cost of equity capital) and has determined that to do so is preferable to issuing Southern common stock or short-term debt.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-13023 Filed 6-8-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49791; File No. SR-CBOE-2004-20]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc., Relating to the \$5 Quotation Spread Pilot Program

June 2, 2004.

#### I. Introduction

On April 5, 2004, the Chicago Board Options Exchange, Inc. ("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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to limit the applicability of the \$5 quote spreads permitted under the CBOE's quote spread pilot program ("Pilot Program")<sup>3</sup> to quotations that are submitted electronically to the CBOE's Hybrid Trading System ("Hybrid"). The CBOE filed Amendment No. 1 to the proposal on April 20, 2004.<sup>4</sup>

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on April 27, 2004.<sup>5</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

In January 2004, the CBOE implemented a six-month Pilot Program, which expires on June 29, 2004, that permits quote spread parameters of up to \$5, regardless of the price of the bid,

for up to 200 options classes traded on Hybrid.<sup>6</sup> The CBOE subsequently expanded the Pilot Program to include all options classes traded on Hybrid.<sup>7</sup> The CBOE proposes to amend the Pilot Program to limit the applicability of the \$5 quote spreads permitted under the Pilot Program to quotations that are submitted electronically to Hybrid. Thus, under the proposal, market makers in Hybrid classes would not be permitted to give verbal quotes in open outcry in accordance with the terms of the Pilot Program. Instead, market makers quoting Hybrid classes in open outcry would be required to give verbal quotes that comply with the quote width requirements established in CBOE Rule 8.7(b)(iv).<sup>8</sup>

#### III. Discussion

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<sup>9</sup> and, in particular, with the requirements of Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

As described more fully above, the proposal limits the quote width relief provided under the Pilot Program to options quotations that are submitted electronically to Hybrid. In its proposal, the CBOE noted that, unlike an options market maker quoting in open outcry, an options market maker quoting electronically could execute numerous transactions before having the ability to adjust his or her quotes to reflect new pricing information. For this reason, a market maker quoting in open outcry has less need for the quote spread relief provided under the Pilot Program than a market maker quoting electronically. Accordingly, by limiting the Pilot

Program to quotes that are submitted electronically to Hybrid, the Commission believes that the proposal is designed to tailor the quote spread relief provided under the Pilot Program to the circumstances where it is most likely to be needed, thereby protecting investors and the public interest.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2004-20), as amended, is approved on a pilot basis until June 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-12996 Filed 6-8-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49792; File No. SR-NSX-2004-05]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Stock Exchange To Extend the Liquidity Provider Fee and Rebate Pilot Program

June 2, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 28, 2004, National Stock Exchange ("Exchange")<sup>3</sup> 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 Exchange. The Exchange filed this proposal pursuant to section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6)<sup>5</sup> thereunder, which renders the proposal effective upon filing with the Commission.<sup>6</sup> The Commission is

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 49153 (January 29, 2004), 69 FR 5620 (February 5, 2004) (notice of filing and immediate effectiveness of File No. SR-CBOE-2003-50) (implementing the Pilot Program through June 29, 2004) ("Pilot Program Notice").

<sup>4</sup> See letter from Steve Youhn, CBOE, to Nancy Sanow, Division of Market Regulation, Commission, dated April 19, 2004 ("Amendment No. 1"). In Amendment No. 1, CBOE revised the text of the proposed rule to change a reference in CBOE Rule 8.7(b)(iv)(A) from "subparagraph (iv)(a)" to "subparagraph (iv)(A)."

<sup>5</sup> See Securities Exchange Act Release No. 49588 (April 21, 2004), 69 FR 22895.

<sup>6</sup> See Pilot Program Notice, *supra* note 3.

<sup>7</sup> See Securities Exchange Act Release No. 49318 (February 25, 2004), 69 FR 10085 (March 3, 2004) (notice of filing and immediate effectiveness of File No. SR-CBOE-2004-10).

<sup>8</sup> Under CBOE Rule 8.7(b)(iv), the allowable bid-ask differentials are: \$0.25 for options under \$2, \$0.40 for options between \$2 and \$5, \$0.50 for options between \$5 and \$10, \$0.80 for options between \$10 and \$20, and \$1.00 for options above \$20.

<sup>9</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange was formerly known as The Cincinnati Stock Exchange. See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003)(SR-CSE-2003-12).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The Exchange provided the Commission with written notice of its intention to file the proposed rule change on May 21, 2004. The Commission reviewed the Exchange's submission, and asked the Exchange to file the instant proposed rule change, pursuant to Rule 19b-4(f)(6) under the Act. 17 CFR 240.19b-4(f)(6).