

**RAILROAD RETIREMENT BOARD****Proposed Collection; Comment Request**

**SUMMARY:** In accordance with the requirement of Section 3506 (c)(2)(A) of 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:* Railroad Service and Compensation Reports; OMB 3220-0008. Under Section 9 of the Railroad Retirement Act (RRA), railroad employers are required to submit reports of their employees' service and compensation. Also, under Section 9 of the RRA and Section 6 of the Railroad Unemployment Insurance Act (RUIA) the Railroad Retirement Board (RRB) maintains, for each railroad employee, a record of the compensation paid by all railroad employers for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the compensation by the employee's railroad employer(s), except in cases when an employee files a protest pertaining to his or her reported compensation within the statute of limitations cited in Section 6 of the RUIA and Section 9 of the RRA.

To enable the RRB to establish and maintain the record of compensation, employers are required to file with the RRB, in such manner and form and at such times as the RRB prescribes, reports of compensation of employees. The information reporting requirements are prescribed in 20 CFR 209.6 through 209.9 and 20 CFR 345.110. The RRB utilizes Form BA-3a, Annual Report of Compensation, Form BA-4, Report of Creditable Compensation Adjustments and Form BA-4 (Internet), Report of

Creditable Compensation Adjustments, to secure the required information from railroad employers. Form BA-3a provides the RRB with information regarding annual creditable service and compensation for each individual who worked in the railroad industry in a given year. Forms BA-4 and BA-4 (Internet) provide for the adjustment of any previously submitted reports and also the opportunity to provide any service and compensation that had been previously omitted. Form BA-4 (Internet) collects essentially the same information as Form BA-4, but it consists of a series of screens which collect the necessary information and provides for the required notices and certifications. Employers also have the option of submitting the reports on the aforementioned forms, or, in like format by magnetic tape, tape cartridges, PC diskettes and CD-ROM as outlined in the RRB's Reporting Instructions to Employers. Submission of the creditable compensation reports is mandatory. One response is required of each respondent. No changes are proposed to Forms BA-3a, BA-4 and BA-4 (Internet).

Form BA-12, System Access Application, identifies employees who are allowed to use the internet to submit reporting forms to the RRB. This form also determines what degree of access (view only, data entry/modification or approval/submission) is appropriate for that employee. Form BA-12, an OMB approved form (3220-0199), is being incorporated into this information collection at the request of OMB. Completion of Form BA-12 is voluntary and is necessary only if an employer wants to submit data and reports via the internet. Minor editorial changes are being proposed to Form BA-12.

The completion time for Form BA-3a is estimated at between 33.3 hours per response for electronic submissions to 85 hours for manual paper responses. The completion time for Form BA-4 is estimated at 60 minutes per response. The completion time for Form BA-4 (Internet) is 15 minutes per response. The completion time for Form BA-12 is estimated at between 10 and 20 minutes. The RRB estimates that approximately 579 Form BA-3a's, 211 Form BA-4's, 1,000 Form BA-4 (Internet) and 350 Form BA-12's are completed annually.

*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](mailto: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](mailto:Ronald.Hodapp@RRB.GOV). Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**  
Clearance Officer.

[FR Doc. 04-22297 Filed 10-4-04; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50469; File No. SR-CBOE-2004-61]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Reduction of Customer Transaction Fees for Options on Exchange-Traded Funds and Holding Company Depositary Receipts**

September 29, 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 September 23, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") 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 CBOE. On September 28, 2004, CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to amend its Fee Schedule to reduce the fees charged to public customers for transactions in options on exchange-traded funds

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

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

<sup>3</sup> See letter from Jamie Galvin, Attorney II, Legal Division, CBOE, to Ira Brandriss, Assistant Director, Division of Market Regulation, Commission, dated September 27, 2004 ("Amendment No. 1"). In Amendment No. 1, the CBOE converted the original proposed rule change from a proposal filed pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(f)(2) thereunder to a "non-controversial" proposal filed pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder, and requested waiver of the 30-day pre-operative period and pre-filing notice requirement for "non-controversial" proposals.

("ETFs") and Holding Company Depositary Receipts ("HOLDRs"). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

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

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

CBOE currently assesses public customer transactions in options on ETFs and HOLDRs the customer transaction fees that apply to index options.<sup>4</sup> Specifically, public customer transactions in these products are assessed transaction fees of \$.45 if the premium is greater than or equal to \$1 and \$.25 if the premium is less than \$1. The Exchange proposes to reduce the transaction fees charged to public customers for transactions in all options on ETFs and HOLDRs to \$.15, regardless of premium, except for options on Dow Jones DIAMONDS (DIA).<sup>5</sup> Options on Dow Jones DIAMONDS will continue to be assessed at current index option customer transaction rates.

The Exchange believes this fee reduction will help the Exchange to compete more effectively for order flow in these products. The Exchange intends to begin assessing the reduced fees on October 1, 2004. The Exchange will reassess the fee reduction as appropriate, and will file any modification to these transaction fees with the Commission pursuant to Section 19(b) of the Act.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of

Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change has been designated by the CBOE as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup>

The foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the 30-day pre-operative period and the five-day pre-filing notice requirement for "non-controversial" proposals and accelerate the operative date of the filing to October 1, 2004, to allow public customers to benefit from the reduced transaction fees in the subject options classes effective on that date. The Commission has determined to waive the five-day notice and the 30-day operative period as requested to permit public customers to benefit from the fee reduction without delay.<sup>10</sup>

Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and

Rule 19b-4(f)(6) thereunder, with an operative date of October 1, 2004.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2004-61 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File No. SR-CBOE-2004-61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from

<sup>4</sup> Except for options on the Nasdaq-100 Index Tracking Stock (QQQ) which are assessed no customer transaction fees.

<sup>5</sup> A \$.04 floor brokerage fee will continue to be charged to executing brokers if a broker executes a customer order in these products.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(i)-(ii).

<sup>10</sup> For the purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR-CBOE-2004-61 and should be submitted on or before October 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50403A; File No. SR-NASD-2004-110]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Divestiture of American Stock Exchange; Correction

September 29, 2004.

In FR Doc. E4-2354, issued on September 23, 2004,<sup>1</sup> the Commission notes that the proposed rule text in subsection (cc) on page 57120, column 3 should state as follows below.

Proposed new language is in italics; proposed deletions are in brackets.

“(cc) “Non-Industry Governor” or “Non-Industry committee member” means a Governor (excluding the Chief Executive Officer and any other officer of the NASD, the President of NASD Regulation), any Floor Governor, and the Chief Executive Officer of Amex)] or committee member who is: (1) A Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on [Nasdaq or Amex, or] *a market for which NASD provides regulation*; (3) *an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market*; or ([3]4) any other individual who would not be an Industry Governor or committee member;”

In the corresponding paragraph describing the proposed rule text, appearing on page 57124, beginning in column 1, the first, second and third complete sentences in column 2 should read as follows:

“Under the proposed amendments, the “Industry Governor” definition will include persons with a consulting or employment relationship with “a market for which NASD provides regulation,” a term that embraces both

markets with which NASD has entered a contract to provide regulatory services, and those in which NASD has an ownership interest. Because NASD has entered into a regulatory services agreement with Amex, and continues both to maintain an ownership interest in and to provide regulatory services to Nasdaq, the amended definition of “Industry Governor” will continue to encompass individuals who have a consulting or employment relationship with Amex or Nasdaq. NASD believes that, given the difficulty and expense involved in amending the NASD By-Laws when regulatory clients are added or deleted, substituting “a market for which NASD provides regulation” is preferable to identifying such clients by name in the By-Laws.”

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50468; File No. SR-NASD-2004-144]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Listing and Trading of Theravance, Inc., Common Stock

September 29, 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 September 24, 2004, the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

Nasdaq proposes to list and trade the common stock (“Common Stock”) of Theravance, Inc. (“Theravance”). The Common Stock includes call and put rights.

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

In its filing with the Commission, Nasdaq 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 III below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Nasdaq proposes to list and trade the Common Stock under the NASD rules that generally apply to the listing, designation for the Nasdaq National Market, and trading of the first class of common stock.<sup>3</sup> As described more fully below, the Common Stock currently includes an unusual feature, call and put rights. Nasdaq believes that the call and put rights make it desirable to apply certain additional requirements in connection with the listing of the Common Stock. Pursuant to its authority under NASD Rule 4300, “Qualification Requirements for Nasdaq Stock Market Securities,” to apply additional or more stringent criteria for the initial or continued inclusion of particular securities, Nasdaq proposes to apply to the Common Stock certain requirements of NASD Rule 4420(f), “Other Securities,” in addition to all of the other requirements normally applicable to common stock. Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.<sup>4</sup>

Theravance has entered into an agreement with GlaxoSmithKline

<sup>3</sup> See the 4300 and 4400 series of the NASD’s rules.

<sup>4</sup> See Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993) (File No. SR-NASD-93-15) (order approving listing standards for hybrid securities products) (“1993 Order”).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See Exchange Act Release No. 50403 (September 16, 2004), 69 FR 57119.

<sup>2</sup> 17 CFR 200.30-3(a)(12).

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

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