the limit of section 12(d)(l)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

12. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the Shares of the Fund exceeds the limits of section 12(d)(l)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

13. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), the Acquiring Fund and the Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, or the trustee and Sponsor of an Acquiring Trust, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(l)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

14. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

15. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

16. No Fund will acquire securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission that allows the Fund to purchase shares of a money market fund for short-term cash management purposes.

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

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17877 Filed 7–14–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 3236/July 12, 2011]

Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 Under the Investment Advisers Act of 1940

I. Background

Section 205(a)(1) of the Investment Advisers Act of 1940 (''Advisers Act'') generally prohibits an investment adviser from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds of a client (also known as ''performance compensation'' or ''performance fees'').[1] Section 205(e) authorizes the Securities and Exchange Commission (''Commission'') to exempt any advisory contract from the performance fee prohibition if the contract is with persons that the Commission determines do not need the protections of the prohibition, on the basis of certain factors described in that section.[2]

Rule 205–3 under the Advisers Act exempts an investment adviser from the prohibition against charging a client performance fees in certain circumstances, including when the client is a ''qualified client.'' The rule allows an adviser to charge performance fees if the client has at least $750,000 under the management of an investment adviser immediately after entering into the advisory contract (''assets-under-management test'') or if the adviser reasonably believes the client has a net worth of more than $1,500,000 at the time the contract is entered into (''net worth test''). The Commission last revised the level of these dollar amount thresholds to account for the effects of inflation in 1998.[3]

[1] 15 U.S.C. 80b–5(a)(1).

[2] Under section 205(e), the Commission may determine that persons do not need the protections of section 205(a)(1) on the basis of such factors as ''financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205].'' 15 U.S.C. 80b–5(e).

[3] *See* Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) [63 FR 39022 (July 21, 1998)].

II. Adjustment of Dollar Amount Thresholds Under the Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act [4] (''Dodd-Frank Act'') amended section 205(e) of the Advisers Act to provide that, by July 21, 2011 and every five years thereafter, the Commission shall adjust for inflation the dollar amount thresholds included in rules issued under section 205(e), rounded to the nearest $100,000.[5] As discussed above, there are two dollar amount thresholds in rules issued under section 205(e), and they are in the assets-under-management and net worth tests in rule 205–3's definition of ''qualified client.''

On May 10, 2011, the Commission published a notice of intent to issue an order revising the dollar amount thresholds of the assets-under-management test and the net worth test.[6] We stated that, based on calculations of inflation since 1998 when the dollar amount thresholds were last revised, we intended to revise the threshold in the assets-under-management test from $750,000 to $1 million, and in the net worth test from $1.5 million to $2 million.[7] We also stated that these revised dollar amounts would take into account the effects of inflation by reference to the historic and current levels of the Personal Consumption Expenditures Chain-Type Price Index, which is published by the Department of Commerce and often used as an indicator of inflation in the personal sector of the U.S. economy.[8] The revised dollar amounts would reflect inflation from 1998 to the end of 2010, and are rounded to the nearest $100,000 as required by section 205(e) of the Advisers Act, as amended by section 418 of the Dodd-Frank Act.

The Commission's notice established a deadline of June 20, 2011 for submission of requests for a hearing. No requests for a hearing have been received by the Commission.[9]

III. Effective Date of the Order

This Order is effective as of September 19, 2011.

IV. Conclusion

Accordingly, pursuant to section 205(e) of the Investment Advisers Act of 1940 and section 418 of the Dodd-Frank Act,

It is hereby ordered that, for purposes of rule 205–3(d)(1)(i) under the Investment Advisers Act of 1940 [17 CFR 275.205–3(d)(1)(i)], a qualified client means a natural person who or a company that immediately after entering into the contract has at least $1,000,000 under the management of the investment adviser; and

It is further ordered that, for purposes of rule 205–3(d)(1)(ii)(A) under the Investment Advisers Act of 1940 [17 CFR 275.205–3(d)(1)(ii)(A)], a qualified client means a natural person who or a company that the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $2,000,000 at the time the contract is entered into.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–17854 Filed 7–14–11; 8:45 am]

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[4] Pub. L. 111–203, 124 Stat. 1376 (2010).

[5] *See* section 418 of the Dodd-Frank Act.

[6] *See* Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3198 (May 10, 2011) [76 FR 27959 (May 13, 2011)] (''Proposing Release''). The Commission also proposed for public comment certain amendments to rule 205–3 that would reflect any inflation adjustments to the rule that we issue by order, as well as other rule amendments that would (i) provide that the Commission will issue an order every five years adjusting for inflation the dollar amount tests, (ii) exclude the value of a person's primary residence from the test of whether a person has sufficient net worth to be considered a ''qualified client,'' and (iii) add certain transition provisions to the rule. The deadline for comments on the proposed rule amendments was July 11, 2011. *Id.*

[7] *See id.* at nn.17–18 and accompanying text.

[8] *See id.* at nn.19–21 and accompanying text.

[9] The Commission has received comments on the rule amendments that it proposed in May 2011, and those comments are available in the public rulemaking file S7–17–11 (available on the Commission's Web site at *http://www.sec.gov/comments/s7-17-11/s71711.shtml*). Several commenters expressed concern about the Commission's expressed intent to raise the dollar amount thresholds of rule 205–3. The Dodd-Frank Act clearly mandates that the Commission adjust the dollar amount thresholds that are the subject of this Order. The Commission intends to evaluate the comments it receives on the rulemaking proposal in its consideration of any adoption of the proposed amendments. *See* Proposing Release, *supra* note 6.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64834; File No. SR–CBOE–2011–057]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PAR Official Fees in Volatility Index Options

July 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 29, 2011, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''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 CBOE. 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

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its Fees Schedule effective July 1, 2011 to establish volume threshold tiers for the assessment of PAR Official Fees in Volatility Index Options classes based on the percentage of volume that is effected by a PAR Official on behalf of an order originating firm or, as applicable, an executing firm. The text of the proposed rule change is availableon the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

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

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

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

[2] 17 CFR 240.19b–4.