

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-50469; File No. SR-CBOE-2004-61)**

**September 29, 2004**

**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**

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 (“ETFs”) and Holding Company Depositary Receipts (“HOLDERS”). The text of the proposed rule change is available at the Office

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<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 Galvan, 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”

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.

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proposals.

<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

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"

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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).

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

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<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).

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 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 [insert date 21 days from publication in the Federal Register].

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