

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52660; File No. SR-CBOE-2005-80)

October 24, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to Crediting of Certain DPM Principal Acting as Agent Order Transaction Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 30, 2005, 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 Exchange. On October 17, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On October 20, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act,⁵ and Rule 19b-4(f)(2) thereunder,⁶ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 was withdrawn by CBOE on October 20, 2005.

⁴ In Amendment No. 2, the Exchange made non-substantive changes to the purpose of the proposed rule change and to the proposed rule text, clarified the apportionment of the \$.20 credit, and added a reimbursement obligation on the part of DPMs in connection with the Linkage Fee Credit described herein.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

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

CBOE proposes to amend its Fees Schedule to enhance the credit to Designated Primary Market-Makers ("DPMs") for transaction fees they incur related to the execution of outbound "principal acting as agent" ("P/A") Orders. The text of the proposed rule change is available on CBOE's Web site, <http://www.cboe.com>, at CBOE's principal office, 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 proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange, pursuant to Section 21 of the CBOE Fees Schedule, credits DPMs for transaction fees they incur related to the execution of outbound P/A Orders, as defined in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage"). This "Linkage Fee Credit" is accomplished via a rebate and a credit: (i) the Exchange rebates transaction fees that DPMs incur when they trade against a customer order that underlies a P/A Order the DPM sent through the Linkage; and (ii) the Exchange credits the DPMs up to an additional 50% of such transaction fees ("50% Credit") to help offset some of the fees the DPMs

incur for submitting P/A Orders through the Linkage.⁷ Thus, at current rates in equity options, a DPM receives a rebate of the \$.12 per contract CBOE transaction fee, and up to an additional \$.06 per contract under the 50% Credit, for a total payment of up to \$.18 per contract.

The Exchange proposes to enhance the Linkage Fee Credit by replacing the 50% Credit with a credit of up to \$.20 per contract. As under the current program, the aggregate amount of the \$.20 per contract credit for all DPMs will be limited to no more than the total amount of fees that the Exchange earns from fees generated by inbound Linkage transaction fees. The foregoing credit is apportioned to DPMs pro-rata based on the number of contracts executed by each DPM at other exchanges via P/A Orders. A DPM will be expected to reimburse the Exchange to the extent that the funds received by the DPM via the Linkage Fee Credit program exceed the DPM's actual costs incurred in executing linkage-related transactions.

The Exchange also proposes to modify Section 23 of the Fees Schedule, which includes a cross-reference to Section 21, to reflect the changes to Section 21.

The purpose of the enhanced Linkage Fee Credit program is to further assist DPMs in offsetting the additional costs they incur in routing orders to other exchanges in order to obtain the National Best Bid or Offer. The proposed Linkage Fee Credit program will be effective October 1, 2005 through December 30, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular, in that

⁷ See Securities Exchange Act Release Nos. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004) (SR-CBOE-2004-08) and 49769 (May 25, 2004), 69 FR 31145 (June 2, 2004) (SR-CBOE-2004-13).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

CBOE believes that the proposed rule change would impose no 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

CBOE did not solicit or receive any written comments with respect to the proposal.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder. Accordingly, the proposal is effective upon filing with the Commission. 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.¹²

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:

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² The effective date of the original proposed rule change is September 30, 2005, and the effective date of Amendment No. 2 is October 20, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 20, 2005, the date on which the Exchange submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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. Please include File Number SR-CBOE-2005-80 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-80. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 Number SR-CBOE-2005-80 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.¹³

Jonathan G. Katz
Secretary

¹³ 17 CFR 200.30-3(a)(12).