SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53866; File No. SR-CBOE-2006-44)

May 25, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Communications Review Fee and DPM Linkage Fees Credit Program

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 May 18, 2006, 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 were prepared by the CBOE. The Exchange 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)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 Exchange proposes to amend its Fees Schedule to: (i) increase the communication review fee; and (ii) amend the DPM Linkage Fees Credit Program ("Program"). The text of the proposed rule change is available on the Exchange's website (http://www.cboe.com), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

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

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(ii).

4 17 CFR 240.19b-4(f)(2).

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 Exchange 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to: (i) increase the communication review fee, and (ii) amend the Program. The Exchange implemented the proposed Fee changes on May 18, 2006.[5]

a. Communication Review Fee

CBOE's Department of Member Firm Regulation reviews member firm options-related advertisements, educational material and sales literature for compliance with applicable rules of CBOE, the SEC and the Securities Investor Protection Corporation.[6] These public communications include, for example, print, television and radio advertisements, and electronic communications such as Web sites.

CBOE assesses a fee for this service ("Communication Review Fee") as follows: (i) Regular review - for printed material reviewed, $75 per submission, plus $10 for each page

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5 See telephone conversation between Jamie Galvan, Senior Attorney, CBOE, and Christopher Chow, Senior Counsel, Commission, on May 24, 2006.

6 CBOE member firms may seek review of their options-related communications by other SROs of which they are members.

reviewed in excess of 10 pages; and for video and audio media reviewed, $75 per submission, plus $10 per minute for each minute of tape reviewed in excess of 10 minutes; (ii) Expedited review - for printed material reviewed, $500 per submission, plus $25 for each page reviewed in excess of 10 pages; and for video and audio media reviewed, $500 per submission, plus $25 per minute for each minute of tape reviewed in excess of 10 minutes. This fee was adopted in December of 2004.[7]

CBOE proposes to increase the Communication Review Fee as follows: (i) Regular review - for printed material reviewed, $150 per submission, plus $25 for each page reviewed in excess of five pages; and for video and audio media reviewed, $150 per submission, plus $25 per minute for each minute of tape reviewed in excess of five minutes; and (ii) Expedited review - for printed material reviewed, $1,000 per submission, plus $50 for each page reviewed in excess of five pages; and for video and audio media reviewed, $1,000 per submission, plus $50 per minute for each minute of tape reviewed in excess of five minutes.

Expedited review would be completed within five business days, instead of three business days, not including the date the item is received by the Department of Member Firm Regulation, unless a shorter or longer period is agreed to by the Department of Member Firm Regulation. The Department of Member Firm Regulation may, in its sole discretion, refuse requests for expedited review.

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[7] See Securities Exchange Act Release No. 50903 (December 21, 2004), 69 FR 78070 (December 29, 2004).

b. DPM Linkage Fees Credit

The Exchange, pursuant to Section 21 of the CBOE Fees Schedule, credits DPMs for transaction fees they incur related to the execution of: (i) outbound principal acting as agent ("P/A") orders; and (ii) outbound Principal orders on behalf of orders that are for the account of a broker-dealer ("P orders").[8] The purpose of the Program is to 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 Program 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 Intermarket Options Linkage ("Linkage"), and when they trade against a broker-dealer order that underlies a P order the DPM sent through the Linkage; and (ii) the Exchange credits DPMs up to an additional $.20 per contract to help offset some of the fees the DPMs incur for submitting such P/A and P orders through the Linkage. In addition, for P orders only, the Exchange credits DPMs up to an additional $.09 per contract on both the CBOE transaction against the broker-dealer order underlying the outbound P order and the P order transaction at another exchange, to help offset the Options Clearing Corporation ("OCC") and clearing firm fees DPMs incur on those transactions.[9]

The Exchange proposes to amend the Program to provide that the Exchange will credit DPMs to cover completely (to the extent possible) the costs incurred by DPMs in executing such outbound P/A and P orders. Specifically, the Exchange proposes to amend Section 21 of the

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8 Broker-dealer orders are orders marked with either a "B" or "F" origin code.

9 See Securities Exchange Act Release No. 53372 (February 24, 2006), 71 FR 11003 (March 3, 2006).

Fees Schedule to provide that the Exchange will credit DPMs with an amount per contract to offset the fees incurred by DPMs when they execute P/A and P orders at other exchanges. The amount of such credit would be a weighted average of the Linkage transaction fees assessed by other exchanges calculated based on outbound Linkage contract volume sent to each of the other exchanges. The references in the Fees Schedule to a $.20 per contract credit would be deleted.

In addition, the Exchange proposes to credit DPMs an amount per contract on CBOE transactions against customer and broker-dealer orders underlying P/A and P orders, and on P/A and P order transactions at other exchanges, to offset the OCC and clearing firm fees DPMs incur on those transactions.[10] The amount of such credit would be comprised of the OCC per contract fee applicable to market-makers and specialists set forth on the OCC Schedule of Fees and an estimated average clearing firm per contract fee. The reference in the Fees Schedule to the $.09 per contract credit would be deleted.

Also, the Exchange proposes to credit DPMs an amount per contract on CBOE transactions against customer and broker-dealer orders underlying P/A and P orders, and on P/A and P order transactions at other exchanges, to offset the Sales Value Fee DPMs may incur on those transactions.[11]

Under the current Program, the Exchange caps the amount of the credits at the amount of total fees received by the Exchange from inbound linkage transaction fees. Because the

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10 Currently, the credit to offset OCC and clearing firm fees applies only to P orders.

11 The Sales Value Fee is assessed by CBOE to each member for sales of securities on CBOE with respect to which CBOE is obligated to pay a fee to the SEC under Section 31 of the Exchange Act. Other exchanges refer to this fee by different names. See Section 6 of the CBOE Fees Schedule.

Exchange proposes to completely cover (to the extent possible) the costs incurred by DPMs in executing such transactions, the Exchange proposes to delete this cap.[12]

As under the current Program, a DPM would be expected to reimburse the Exchange to the extent that the funds received by the DPM via the Program exceed the DPM's actual costs incurred in executing Linkage-related transactions.[13]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(4) of the Act[15] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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

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

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[12] The Exchange notes that a Linkage Plan amendment has been separately submitted to the Commission to permit an Exchange account, instead of the DPM's account, to be used by the Exchange to send and respond to P/A orders ("Linkage Account Plan Amendment"). Pursuant to Section 21 of the Fees Schedule, the DPM Linkage Fee Credit Program with respect to P/A orders will expire upon the earlier of: (i) 30 days after Commission approval of the Linkage Account Plan Amendment; or (ii) July 31, 2006, which is the expiration date of the Linkage fees pilot program.

[13] The Exchange intends to monitor on a regular basis to ensure that no DPM receives funds via the Program in amounts that exceed the DPM’s actual costs in executing Linkage-related transactions.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[16] and paragraph (f)(2) of Rule 19b-4 thereunder[17] because it establishes or changes a due, fee, or other charge applicable only to members of the Exchange. 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. Please include File Number SR-CBOE-2006-44 on the subject line.

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[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b-4(f)(2).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-44. 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 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-2006-44 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.[18]

Nancy M. Morris
Secretary

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[18] 17 CFR 200.30-3(a)(12).