

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53168; File No. SR-CBOE-2006-06)

January 23, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Marketing Fee 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 January 12, 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 have been prepared by the Exchange. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act³ 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 CBOE proposes to amend its Fees Schedule and its marketing fee program.

Below is the text of the proposed rule change. Proposed new language is underlined; deletions are in [brackets].

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).

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEES SCHEDULE

[December 26, 2005] January 12, 2006

1. No Change.
2. **MARKETING FEE (6)(16)**.....\$.65
3. – 4. No Change.

FOOTNOTES:

(1) – (5) No Change.

(6) Commencing on December 12, 2005, the Marketing Fee will be assessed only on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from orders for less than 1,000 contracts (i) from payment accepting firms, or (ii) that have designated a “Preferred Market-Maker” under CBOE Rule 8.13 at the rate of \$.65 per contract on all classes of equity options, options on HOLDRs, options on SPDRs, and options on DIA. The fee will not apply to Market-Maker-to-Market-Maker transactions or transactions resulting from P/A orders. This fee shall not apply to index options and options on ETFs (other than options on SPDRs and options on DIA). A Preferred Market-Maker will only be given access to the marketing fee funds generated from a Preferred order if the Preferred Market-Maker has an appointment in the class in which the Preferred order is received and executed. If less than 80% of the marketing fee funds are paid out by the DPM/LMM or Preferred Market-Maker in a given month, then the Exchange would refund such surplus at the end of the month on a pro rata basis

based upon contributions made by the Market-Makers, RMMs, e-DPMs, DPMs and LMMs. However, if 80% or more of the accumulated funds in a given month are paid out by the DPM/LMM or Preferred Market-Maker, there will not be a rebate for that month and the funds will carry over and will be included in the pool of funds to be used by the DPM/LMM or Preferred Market-Maker the following month. At the end of each quarter, the Exchange would then refund any surplus, if any, on a pro rata basis based upon contributions made by the Market-Makers, RMMs, DPMs, e-DPMs and LMMs. CBOE's marketing fee program as described above will be in effect until June 2, 2006.

Remainder of Fees Schedule – No change.

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 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

On December 12, 2005, CBOE amended its marketing fee program in a number of respects.⁵ CBOE states that, as amended, the fee is assessed upon DPMs, LMMs, e-DPMs, RMMs, and Market-Makers at the rate of \$.65 per contract on transactions of Market-Makers,

⁵ See Securities Exchange Act Release No. 53016 (December 22, 2005), 70 FR 77209 (December 29, 2005) (SR-CBOE-2005-107).

RMMs, e-DPMs, DPMs, and LMMs resulting from orders for less than 1,000 contracts (i) from payment accepting firms (“PAFs”) or (ii) that have designated a “Preferred Market-Maker” under CBOE Rule 8.13 (“Preferred orders”). CBOE notes that the fee does not apply to Market-Maker-to-Market-Maker transactions (which includes all transactions between any combination of DPMs, e-DPMs, RMMs, LMMs, and Market-Makers), or transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from inbound P/A orders. CBOE states that the marketing fee is assessed in all equity option classes and options on HOLDRs[®], options on SPDRs[®], and options on DIA.

With respect to the manner in which funds generated by the marketing fee will be allocated between the DPM or LMM and Preferred Market-Makers, CBOE states that it amended its marketing fee program to provide that:

- If a Market-Maker (including any DPM, e-DPM, LMM, and RMM) is designated as a Preferred Market-Maker on an order for less than 1,000 contracts, the Market-Maker will be given access to the marketing fee funds generated from the Preferred order, even if the Preferred Market-Maker did not participate in the execution of the Preferred order because the Market-Maker was not quoting at the NBBO at the time the Preferred order was received on CBOE; and
- The DPM or LMM, as applicable, will be given access to the marketing fee funds generated from all other orders for less than 1,000 contracts from PAFs in its appointed classes in a particular trading station.

CBOE now proposes to amend its marketing fee program to make clear that a Preferred Market-Maker would only be given access to the marketing fee funds generated from a Preferred order if the Preferred Market-Maker has an appointment in the class in which the Preferred order

is received and executed. As before, to receive access to the funds, the Preferred Market-Maker would not be required to participate in the execution of the Preferred order if the Market-Maker was not quoting at the NBBO at the time the Preferred order was received on CBOE. However, the Preferred Market-Maker would have to have an appointment in the option class in order to receive access to the marketing fee funds. CBOE states that, if a Preferred Market-Maker does not have an appointment in the option class in which a Preferred order designating that Market-Maker as the “Preferred Market-Maker” is received and executed, then the funds generated from the order would be provided to the DPM or LMM. CBOE believes it is appropriate and reasonable to require that a Preferred Market-Maker have an appointment in an option class (and presumably be meeting the Market-Maker’s obligations under CBOE’s rules), in order to receive access to the marketing fee funds.

CBOE states that it is not amending its marketing fee program in any other respect.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁷ in particular, in that 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

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

⁶ 15 U.S.C. 78f(b).

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

No written comments were either solicited or received.

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 Act⁸ and Rule 19b-4(f)(2)⁹ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such 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-2006-06 on the subject line.

Paper comments:

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2006-06. 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 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 Number SR-CBOE-2006-06 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.¹⁰

Nancy M. Morris
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).