

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49575; File No. SR-CBOE-2004-13)

April 16, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Chicago Board Options Exchange, Inc. Relating to Retroactive Crediting of DPM Principal Acting as Agent Order Transaction Fees

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 March 9, 2004, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) submitted to 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 March 31, 2004, the 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, as amended, from interested persons.

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

The CBOE proposes to change its Fee Schedule to retroactively credit Designated Primary Market-Makers (“DPMs”) for transaction fees they incur in executing outbound “principal acting as agent” (“PA”) Orders, as defined in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the “Linkage Plan”).

The text of the proposed fee schedule is below. Proposed additions are in italics. Proposed deletions are in [brackets].

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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 Chris Hill, Attorney, CBOE, to Nancy Sanow, Assistant Director, Commission, dated March 26, 2004 (“Amendment No. 1”). In Amendment No. 1, the CBOE submitted a new Form 19b-4, which replaced and superceded the original filing in its entirety.

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## Chicago Board Options Exchange, Incorporated Rules

**FEE SCHEDULE**

May 1, 2004

**1 – 20.** (No Change).

**21. DPM Fees Credit Relating to Duplicate Transactions re Linkage**

Effective July 1, 2003 [February 2, 2004], DPM transaction and trade match fees generated from “scratched” (or linked) transactions with outbound principal acting as agent (PA) orders will be credited to DPMs (currently \$.24 per contract). In addition, when DPMs incur fees to execute PA orders at other exchanges, those DPMs will be credited up to an additional 50% of the CBOE transaction and trade match fees related to those outbound PA transactions, up to the amount of total fees CBOE receives from inbound linkage [inbound ] transaction and trade match fees. At current rates, this amounts to an additional credit of up to \$.12 per contract, for a total credit of up to \$.36 per contract.

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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 had 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

The purpose of this proposed rule change is to amend the Exchange fee schedule to retroactively establish certain fee relief that was provided prospectively in a previous CBOE rule change filing<sup>4</sup> and to clarify when such relief is available.

As explained in that previous proposed rule change, pursuant to Linkage Plan, CBOE DPMs are required in certain circumstances to send a PA Order to another exchange in order to obtain the National Best Bid or Offer (“NBBO”) price for their customers. The DPM usually pays transaction fees to the other exchange as well as to the Options Clearing Corporation (“OCC”) to execute this PA Order at the other exchange. Then, under the Linkage procedure,<sup>5</sup> when the DPM receives a fill of its PA Order from the other exchange, the CBOE DPM must then re-trade the order back to their customer, resulting in additional transaction fees (this time from CBOE and the OCC.) Thus, the Linkage procedure’s requirement to re-trade means that DPMs who send such PA Orders to other exchanges may incur duplicate transaction and OCC fees on PA Orders that substantially increase the costs of such transactions for the DPMs.

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<sup>4</sup> See Securities Exchange Act Release No. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2004-08).

<sup>5</sup> “Linkage procedure” describes the process that CBOE DPMs undergo to fulfill the Customer order underlying a PA Order after another exchange fills the PA Order. The CBOE believes that this process is uniform among exchanges that are Participants in the Linkage Plan. Telephone conversation between Chris Hill, Attorney, CBOE and Tim Fox, Attorney, Commission on April 12, 2004.

In SR-CBOE-2004-08,<sup>6</sup> the Exchange established a two-phased relief to offset these additional costs. First, the CBOE established rebates for all CBOE transaction and trade match fees related to the orders that CBOE DPMs fulfill by sending PA transactions to other exchanges (i.e., the fees from the “re-trade.”) At current rates, this is \$0.24 per contract.

Second, in order to help offset the transaction-related costs that the DPMs are assessed on PA orders sent to other exchanges by the OCC and the other exchanges, the Exchange credits CBOE DPMs who incur such costs an additional 50% of the CBOE transaction and trade match fees related to each outbound PA transaction. At current rates, this is \$0.12 per contract. This second rebate will be funded by the amount of total transaction and trade match fees that CBOE receives from incoming PA orders from other exchanges (“incoming PA fees”), and the aggregate amount rebated in the second rebate will be limited to no more than the total amount of incoming PA fees.

SR-CBOE-2004-08<sup>7</sup> established the fee changes described above prospectively pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder.<sup>9</sup> In this filing, the Exchange proposes to extend this relief retroactively back to all applicable transactions occurring since the start of the CBOE fiscal year on July 1, 2003.

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<sup>6</sup> See supra note 4.

<sup>7</sup> Id.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

## 2. Statutory Basis

The CBOE believes that the proposed rule is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>11</sup> 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 CBOE does not believe that the proposed rule change will impose any burden on competition 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

- (A) by order approve such proposed rule change, as amended; or
- (B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

#### 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 Number SR-CBOE-2004-13 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 Number SR-CBOE-2004-13. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-13 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>12</sup>

Margaret H. McFarland  
Deputy Secretary

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