

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50837; File No. SR-CBOE-2004-76)

December 10, 2004

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to a DPM and Market-Maker Transaction Fee in Options on the Mini-Nasdaq-100 Index

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder² notice is hereby given that on November 23, 2004, the Chicago Board Options Exchange, Inc. (“CBOE” or the “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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self Regulatory Organization’s Statement of the Terms and Substance of the Proposed Rule Change

CBOE proposes to amend its Fee Schedule to establish a \$.10 per contract license fee on all Designated Primary Market-Maker and market-maker contracts traded in options on the Mini-Nasdaq-100 Index (“MNX”). The text of the proposed rule change is available at the Office 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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, Proposed Rule Change

1. Purpose

The Exchange proposes to establish a \$.10 per contract license fee on all Designated Primary Market-Maker (“DPM”) and market-maker contracts traded in MNX options.

Currently, the MNX DPM is charged a \$.25 per contract supplemental transaction fee for transactions for its proprietary account, in addition to the regular transaction fee of \$.24 per contract. The \$.25 per contract supplemental transaction fee is charged to the DPM to assist the Exchange in offsetting some of the royalty fees that the Exchange must pay to the Nasdaq Stock Market (“Nasdaq”) for its license to trade the MNX product.³

On November 23, 2004, MNX options will begin trading on the Exchange's Hybrid Trading System (“Hybrid”). In light of MNX options moving to the Hybrid system, the Exchange has determined to spread the license fee obligation among all market-makers in the MNX trading crowd, including the DPM. Instead of assessing only the MNX DPM a supplemental fee of \$.25 per contract, the Exchange proposes to assess the MNX DPM and all MNX market-makers a license fee of \$.10 per contract (in addition to the regular transaction fee of \$.24 per contract) to help the Exchange meet its license fee obligation to Nasdaq.

³ Securities Exchange Act Release No. 43226 (August 29, 2000), 65 FR 54332 (September 7, 2000) (SR-CBOE-00-33).

The Exchange believes that the proposed license fee results in a more equitable allocation of the MNX license fee obligation in MNX's new Hybrid Trading System environment. The proposed license fee is consistent with similar license fees that the Exchange has previously implemented to recover license costs for the RUT and DJX option classes.⁴ The Exchange intends to implement this license fee on December 1, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act⁶ 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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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.

⁴ Securities Exchange Act Release No. 49601 (April 22, 2004), 69 FR 23836 (April 30, 2004) (SR-CBOE-2004-19) (RUT license fee), and Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003) (SR-CBOE-2003-26) (DJX license fee).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii)⁷ of the Act and subparagraph (f)(2) of Rule 19b-4⁸ thereunder. 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-2004-76 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.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-CBOE-2004-76. 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-2004-76 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 authority⁹.

J. Lynn Taylor
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).