

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51351; File No. SR-CBOE-2005-14)

March 9, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Transaction Fees for Options on the Mini-Nasdaq-100 Index and Options on the Nasdaq-100 Index

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 January 31, 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 and II below, which Items have been prepared by CBOE. On March 2, 2005, CBOE amended the proposed rule change (“Amendment No. 1”).<sup>3</sup> The proposed rule change, as amended, has been filed by CBOE as a non-controversial filing pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup>, and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

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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> In Amendment No. 1, the Exchange changed the basis under Rule 19b-4 for filing the proposed rule change from paragraph (f)(2) to paragraph (f)(6) of Rule 19b-4 and made certain clarifying changes.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

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

CBOE proposes to amend its Fee Schedule relating to transaction fees for options on the Mini-Nasdaq-100 Index ("MNX") and the Nasdaq-100 Index ("NDX"). The text of the proposed rule change is available on the CBOE Web site (<http://www.cboe.com>), 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 the places specified in Item IV below. 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 Exchange proposes to amend its Fee Schedule to amend certain transaction fees for MNX and NDX options and to expand the application of the license fee that is currently charged to the MNX Designated Primary Market-Maker ("DPM") and MNX market-makers.

Specifically, the Exchange proposes to reduce public customer transaction fees to \$.15 per contract for transactions in MNX and NDX options. Currently, MNX customer transaction fees are \$.20 per contract and NDX customer transaction fees are \$.45 if the premium is greater than or equal to \$1 and \$.25 if the premium is less than \$1.

Member firm proprietary transaction fees for MNX and NDX options are currently \$.20 per contract for facilitation of customer orders and \$.24 per contract for non-facilitation orders. The Exchange proposes to increase the transaction fee for facilitation of MNX and NDX customer orders to \$.24 per contract, making it equivalent to the fee for non-facilitation orders. The facilitation transaction fee increase will help the Exchange offset the proposed fee reductions. Broker-dealer transaction fees for MNX and NDX options are currently \$.45 per contract if the premium is greater than or equal to \$1 and \$.25 per contract if the premium is less than \$1. The Exchange proposes to reduce MNX and NDX broker-dealer transaction fees to \$.25 per contract regardless of the premium.

The Exchange proposes to expand the application of the license fee that is currently charged to the MNX DPM and MNX market-makers. Currently, the Exchange charges the MNX DPM and MNX market-makers a license fee of \$.10 per contract, in addition to the regular transaction fee of \$.24 per contract, 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. The Exchange also has paid royalty fees to Nasdaq for its license to trade the NDX product but to date has not imposed any license fee on the market participants who trade NDX. The Exchange proposes to assess the \$.10 license fee to transactions of all market participants in MNX and NDX options except for public customers (i.e., CBOE and non-member market-maker, member firm and broker-dealer).

The license fee would apply to linkage orders, except for Satisfaction Orders.<sup>7</sup> The Exchange notes that the proposed application of the license fee to linkage orders is similar to the surcharge imposed on certain linkage orders by the International Securities Exchange. Expanding the application of the license fee would further assist the Exchange in recovering some of its costs for its licenses to trade the MNX and NDX products, and is similar to surcharge fees charged by other exchanges.<sup>8</sup>

The Exchange believes the proposed fee changes would help the Exchange to compete more effectively for order flow in these products. The Exchange intends to implement these fee changes on February 1, 2005.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup>, in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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

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

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<sup>7</sup> Linkage order transaction fees are currently in effect as a pilot program that is due to expire on July 31, 2005. The Commission notes that in Amendment No. 1, the Exchange clarified that the MNX and NDX license fee as applied to linkage orders, except for Satisfaction Orders, is incorporated in CBOE's pilot program for linkage transaction fees that expires on July 31, 2005.

<sup>8</sup> See, e.g. Securities Exchange Act Release No. 47564 (March 24, 2003), 68 FR 15256 (March 28, 2003) (SR-ISE-2003-13).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 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

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

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder<sup>12</sup> because the proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder.

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay.<sup>15</sup> The Commission is exercising its authority to waive the five-day pre-filing notice requirement and believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative delay would allow CBOE to implement as of February 1, 2005, new and revised fees applicable to MNX and NDX options that in the

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

case of their application to linkage transactions is similar to those charged by another exchange.<sup>16</sup> In addition, accelerating the operative date should allow public customers to benefit promptly from the reduced transaction fees in these index option classes. For these reasons, the Commission designates the proposed rule change, as amended, to be effective upon filing with the Commission.<sup>17</sup>

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 the furtherance of the purposes of the Act.<sup>18</sup>

#### 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

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<sup>16</sup> See supra note 7.

<sup>17</sup> For purposes of only accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>18</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 2, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-14 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-2005-14. 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. 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-2005-14 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>19</sup>

J. Lynn Taylor  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).