

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51687; File No. SR-CBOE-2005-36)

May 12, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Waiver of May 2005 Member Dues for CBOE Market-Makers

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 2, 2005, the Chicago Board Options Exchange, Inc. (“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 CBOE. On May 4, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.³ On May 5, 2005, the CBOE submitted Amendment No. 2 to the proposed rule change.⁴ 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 Act,⁵ and Rule 19b-4(f)(2) thereunder,⁶ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the CBOE amended the rule text of the proposed rule change to clarify that the dues waiver applies to the Reduced Value Russell 2000 index options, which are a hybrid options class.

⁴ In Amendment No. 2, the CBOE made technical corrections to the rule text of the proposed rule change.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

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

The CBOE proposes to amend its Fees Schedule to waive May 2005 member dues for CBOE market-makers who automatically execute 2000 contracts or more during May 2005 in hybrid options classes. Below is the text of the proposed rule change, as amended. Proposed new language is italicized; proposed deletions are in [brackets].

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEES SCHEDULE

[APRIL 25]MAY 2, 2005

1. – 4. Unchanged.

Notes: (1) – (15) Unchanged.

5. – 8. Unchanged.

9. MEMBER DUES* \$450 per month

* The Exchange will waive May 2005 member dues for CBOE market-makers who automatically execute 2000 contracts or more (through the use of "M" orders) during May 2005 in hybrid options classes, i.e., all equity options classes and the MNX, QQQQ, Reduced Value Russell 2000 and SPDR options classes.

10. – 23. Unchanged.

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 its 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

On January 10, 2005, the Commission approved a CBOE rule proposal (SR-CBOE-2005-01)⁷ to allow CBOE market participants⁸ the ability to submit orders for automatic execution. As a result of that rule change, Market-Makers, DPMs, eDPMs and RMMs (collectively, "CBOE Market-Makers") for the first time have the ability to submit orders that are eligible to execute automatically against resting orders in the electronic book in hybrid options classes (i.e., all equity options classes, the CBOE Mini-NDX index option classes ("MNX"), the option classes based on the Nasdaq-100's Depository Receipts ("QQQQ"), the Reduced Value Russell 2000 index option classes,⁹ and the option classes based on Standard & Poor's Depository Receipts ("SPDRs options")). An order submitted for automatic execution by a CBOE Market-Maker is marked with an "M" origin code.

As part of a marketing campaign to make CBOE Market-Makers aware of the benefits of this improved access to orders in the book, the Exchange proposes to waive May 2005 member dues for CBOE Market-Makers who automatically execute 2000 contracts or more (through the use of "M" orders) during May 2005 in hybrid options

⁷ See Securities Exchange Act Release No. 51003 (January 10, 2005), 70 FR 2682 (January 14, 2005).

⁸ CBOE Rule 6.45A defines a market participant as a market-maker, an in-crowd DPM, an e-DPM, a Remote Market-Maker and a floor broker representing orders in the trading crowd.

⁹ See Amendment No. 1, Supra note 3.

classes. Qualifying members would receive a rebate of member dues. The rebate will be processed in June as a credit on billing statements produced at month-end.

The Exchange believes that the proposed dues waiver will be successful in attracting additional liquidity to the CBOE.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹¹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE's members.

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

The CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition that is 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

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

Section 19(b)(3)(A)(ii) of the Act¹² and subparagraph (f)(2) of Rule 19b-4 thereunder.¹³ Accordingly, the proposal will take effect upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, as amended, 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.¹⁴

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-2005-36 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.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 5, 2005, the date on which the Exchange submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

All submissions should refer to File Number SR-CBOE-2005-36. 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, as amended, 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 the 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-2005-36 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.¹⁵

Margaret H. McFarland
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).