

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51705; File No. SR-CBOE-2005-35)

May 18, 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 Eliminating the Remote Market-Maker Inactivity Fee

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 April 26, 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 11, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.³ On May 17, 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 from interested parties.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange clarified the description of the purpose of the inactivity fee and amended the proposal’s rule text to indicate the date of its Fees Schedule.

⁴ In Amendment No. 2, the Exchange made technical corrections to the proposal’s rule text and further revised the date of its Fees Schedule.

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 Exchange proposes to eliminate the Remote Market-Maker ("RMM") inactivity fee. 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 20, 2005] May 13, 2005

1. OPTIONS TRANSACTION FEES (1)(3)(4)(7): PER CONTRACT

EQUITY OPTIONS (13):

I. – VIII. Unchanged.

IX. REMOTE MARKET-MAKER [(16)] \$.26

QQQQ and SPDR OPTIONS:

I. - VI. Unchanged.

VII. REMOTE MARKET-MAKER [(16)] \$.26

2. – 4. Unchanged

NOTES:

(1) – (15) Unchanged

[(16) Effective May 1, 2005, RMMs may be assessed an inactivity fee, as described in Section 22.]

5. – 21. No change

[22. RMM Inactivity Fee

A one-time inactivity fee will be charged to RMMs, on a per product basis, for each product for which an RMM receives an appointment through the initial RMM allocation

process but does not submit quotes, as described below.

An inactivity fee of \$1,000 per product will be assessed upon an RMM for each product:

(a) in which the RMM receives an appointment during the initial RMM allocation process; (b) that the RMM maintains as part of its appointment for the entire period commencing with the date of the initial RMM allocation process and ending thirty days after the termination of the rollout of the RMM program; and (c) in which the RMM does not submit any quotations during the period described in (b). The termination of the rollout of the RMM program will not occur prior to July 15, 2005.

An inactivity fee of \$1,000 per product will be assessed upon an RMM for each product:

(a) in which the RMM receives an appointment during the initial RMM allocation process; (b) in which the RMM relinquishes its appointment at any time during the period commencing with the date of the initial RMM allocation process and ending thirty days after the termination of the rollout of the RMM program; and (c) in which the RMM does not submit any quotations during the period described in (b). The termination of the rollout of the RMM program will not occur prior to July 15, 2005.

RMM organizations that relinquish appointments by virtue of the fact that they obtained an appointment in the identical product either as a DPM or e-DPM will not be required to pay the inactivity fee.]

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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 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 Exchange received approval of its RMM program on March 14, 2005.⁷ On April 14, 2005, the Commission approved the Exchange's inactivity fee, which basically is imposed upon members that receive initial allocations of products as RMMs but then cancel those appointments prior to quoting those products.⁸ The inactivity fee was also to be imposed when an RMM received an appointment of an option class, retained its appointment in the option class, but did not submit quotes in that product during any portion of the rollout of the RMM program. The purpose of the inactivity fee was to prevent members from applying for appointments in products in which they had no intention of quoting, thereby preventing other members from securing appointments in products.

Now that the initial appointment allocation process is over, all RMMs have received all of their requested appointments and there are no waiting lists. In this regard, the threat of the inactivity fee served its purpose. The Exchange now proposes to eliminate it, thereby allowing free movement (i.e., allowing RMMs to freely change appointments). Because there is no waiting list in any products, the Exchange does not believe retaining the inactivity fee serves any purpose. Any RMM, currently, may

⁷ See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005).

⁸ See Securities Exchange Act Release No. 51542 (April 14, 2005), 70 FR 20952 (April 22, 2005).

request and receive an appointment in any class, so preventing some RMMs from changing appointments by virtue of the threat of the inactivity fee serves no purpose. Upon elimination of this fee, any RMM will be free to give up its appointments without owing any Exchange fees. The proposal eliminates the possible imposition of a fee upon any RMM that gives up its appointments in a product without having submitted any quotes in that product.

2. Statutory Basis

For the reasons described above, the CBOE believes that the proposed rule change, as amended, is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act¹⁰ in that it provides 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, 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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 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, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹² 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, 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.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2005-35 on the subject line.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 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 the period to commence on May 17, 2005, the date on which the Exchange submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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-2005-35. 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-2005-35 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.¹⁴

Margaret H. McFarland
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).