

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51746; File No. SR-CBOE-2005-32)

May 26, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to Remote Market-Maker 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 April 20, 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, II and III below, which Items have been prepared by the CBOE. On May 18, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> 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.

---

<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: (1) clarified how the fixed annual fee alternative for DPMs and e-DPMs would be applied when an entity that has elected the fixed annual fee alternative merges or combines operations with an entity that has not elected the fixed annual fee alternative; and (2) revised the date of the Fees Schedule.

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

<sup>5</sup> 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 amend its Fees Schedule to (i) establish transaction fees for Remote Market-Makers ("RMMs"), (ii) amend its Designated Primary Market-Maker ("DPM") and Electronic DPM ("e-DPM") fixed annual fee program to include a fixed fee alternative for RMM transaction fees, and (iii) explain how DPM or e-DPM consolidations will affect the fixed annual 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

[MARCH 2]MAY 18, 2005

1.	OPTIONS TRANSACTION FEES (1)(3)(4)(7):	PER CONTRACT
	EQUITY OPTIONS (13):	
I.	CUSTOMER.....	\$.00
II.	MARKET-MAKER (MM) (standard rate)(10) .....	\$.22
III.	MEMBER FIRM PROPRIETARY: (11)	
	• FACILITATION OF CUSTOMER ORDER .....	\$.20
	• NON-FACILITATION ORDER .....	\$.24
IV.	BROKER-DEALER .....	\$.25
V.	NON-MEMBER MARKET MAKER .....	\$.26
VI.	DESIGNATED PRIMARY MARKET-MAKER (DPM) (10)( <u>14</u> ).....	\$.12
VII.	ELECTRONIC DPM (e-DPM) (14) .....	\$.25
VIII.	LINKAGE ORDERS (8) .....	\$.24

IX. REMOTE MARKET-MAKER (14) .....\$26

QQQQ and SPDR OPTIONS:

I. CUSTOMER:

- QQQQ.....\$00
- SPDR.....\$15

II. MARKET-MAKER (MM) AND DPM (standard rate)(10).....\$24

III. MEMBER FIRM PROPRIETARY: (11)

- FACILITATION OF CUSTOMER ORDER .....\$20
- NON-FACILITATION ORDER .....\$24

IV. BROKER-DEALER .....\$25

V. NON-MEMBER MARKET MAKER.....\$26

VI. LINKAGE ORDERS (8) .....\$24

VII. REMOTE MARKET-MAKER .....\$26

INDEX OPTIONS

I. - VIII. Unchanged.

2. MARKET-MAKER, e-DPM & DPM MARKETING FEE (in option classes in which a DPM has been appointed)(6) Unchanged.

3. FLOOR BROKERAGE FEE (1)(5): Unchanged.

4. RAES ACCESS FEE (RETAIL AUTOMATIC EXECUTION SYSTEM) (1)(4):

Unchanged.

Notes: (1) – (13) Unchanged.

(14) [Effective October 1, 2004, DPMs and e-DPMs may elect to pay a fixed annual fee of \$1.75 million instead of being assessed transaction fees on a per contract

basis for their DPM and e-DPM transactions only in all equity option classes. The fixed fee does not cover any floor brokerage fees. DPMs electing to pay the fixed fee will neither be charged CBOE transaction fees for CBOE transactions related to such outgoing P/A orders, nor will they receive the credit back for such fees as set forth in Section 21 of this Fee Schedule. However, pursuant to the second phase of linkage fee set forth in Section 21 of this Fee Schedule, all CBOE DPMs, including those electing the fixed annual fee, who pay transaction fees at other exchanges to execute P/A orders there, will receive a credit of up to 50% of CBOE DPM transaction charges for each such order (currently up to \$.06 per contract, with the total of such credits not to exceed the total amount of inbound linkage transaction fees received by CBOE) to help offset the transaction fees of other exchanges that CBOE DPMs incur in filling P/A orders at those exchanges.] Please see Section 23 for details of the Fixed Annual Fee Alternative for DPMs and e-DPMs.

(15) Unchanged.

5. – 21. Unchanged.

22. Reserved.

23. FIXED ANNUAL FEE ALTERNATIVE FOR DPMs and e-DPMs

Effective October 1, 2004, DPMs and e-DPMs may elect to pay a fixed annual fee of \$1.75 million instead of being assessed transaction fees on a per contract basis for their DPM and e-DPM transactions only in all equity option classes. The fixed fee does not cover any floor brokerage fees. DPMs electing to pay the fixed fee will neither be charged CBOE transaction fees for CBOE transactions related

to outgoing P/A orders, nor will they receive the credit back for such fees as set forth in Section 21 of this Fee Schedule. However, pursuant to the second phase of linkage fee relief set forth in Section 21 of this Fee Schedule, all CBOE DPMs, including those electing the fixed annual fee, who pay transaction fees at other exchanges to execute P/A orders there, will receive a credit of up to 50% of CBOE DPM transaction charges for each such order (currently up to \$.06 per contract, with the total of such credits not to exceed the total amount of inbound linkage transaction fees received by CBOE) to help offset the transaction fees of other exchanges that CBOE DPMs incur in filling P/A orders at those exchanges. Effective July 1, 2005, DPMs and e-DPMs who elect the fixed annual fee alternative described above may elect to pay an RMM fixed annual fee of \$250,000 instead of being assessed transaction fees on a per contract basis for their RMM transactions only in all equity options.

If a DPM or e-DPM who has elected the fixed annual fee alternative merges or combines operations with a DPM or e-DPM who has not elected the fixed annual fee alternative, then the fixed annual fee will be increased and assessed to the surviving DPM / e-DPM entity. The amount of the increase will be based on the number of contracts traded and transaction fees paid during the previous twelve months by the DPM or e-DPM organization who had not previously elected the fixed annual fee alternative. The amount of the increase will be prorated based on the amount of time remaining in the then current year of the fixed annual fee program. If two DPMs or e-DPMs who elected the fixed annual fee alternative merge or combine operations, the fixed fee paid to CBOE by these two

organizations will be unaffected. No adjustments or refunds will be made to either entity.

\* \* \* \* \*

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 proposes to amend its Fees Schedule to (i) establish transaction fees for RMMs, (ii) amend its DPM and e-DPM fixed annual fee program to include a fixed fee alternative for RMM transaction fees, and (iii) explain how DPM or e-DPM consolidations will affect the fixed annual fee.

RMM Transaction Fees

The Commission approved the Exchange's RMM program on March 14, 2005.<sup>6</sup> An RMM is an individual member or member organization registered with the Exchange that makes transactions as a dealer-specialist from a location other than the physical trading station for the subject option class.

The Exchange proposes to set transaction fees for RMMs in equity, QQQQ and

---

<sup>6</sup> See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005).

SPDR options at \$.26 per contract. The Exchange believes the proposed RMM transaction fee is appropriately set higher than those of on-floor market-makers because the Exchange will incur additional systems and other logistical costs both initially and on an ongoing basis in order to establish and maintain the infrastructure needed to enable market participation as an RMM.

#### RMM Fixed Fee Alternative

On October 1, 2004, the Exchange implemented a fixed annual fee program for DPMs and e-DPMs.<sup>7</sup> The program offers DPMs and e-DPMs the alternative of choosing a fixed annual fee of \$1.75 million instead of being assessed transaction fees on a per contract basis for its DPM and e-DPM transactions in equity options classes.<sup>8</sup>

The Exchange proposes to amend the program to permit DPMs and e-DPMs who elect the fixed annual fee alternative to pay an additional fixed annual fee of \$250,000 as an alternative to being assessed transaction fees on a per contract basis for their RMM transactions. Like the existing program, the RMM fixed fee alternative would apply only to equity options transactions. Since trading by RMMs will not commence until sometime in the second quarter of 2005, the Exchange proposes to begin the RMM fixed fee alternative program on July 1, 2005 and prorate the amount of the fixed annual fee to \$125,000 for calendar year 2005. The amount of the RMM fixed annual fee and the option to elect the fixed fee will be reviewed annually and may change from year to year. Any changes to the RMM fixed annual fee would be required to be filed with the Commission.

---

<sup>7</sup> See Securities Exchange Act Release No. 50058 (July 22, 2004), 69 FR 45861 (July 30, 2004).

<sup>8</sup> See CBOE Fees Schedule, Note 14.

The Exchange proposes to create a new Section 23 in the Fees Schedule that describes the DPM and e-DPM fixed annual fee program (by adding to it the text from Note 14 of the Fees Schedule) and the RMM fixed annual fee alternative. Note 14 is revised to delete the current text and to add a cross reference to Section 23.

Effect of DPM or e-DPM Consolidations on the Fixed Annual Fee

The Exchange also proposes to add to Section 23 of the Fees Schedule an explanation of how the fixed annual fee would be affected when a DPM or e-DPM organization merges or combines operations with another DPM or e-DPM. Specifically, if a DPM or e-DPM who has elected the fixed annual fee alternative merges or combines operations with a DPM or e-DPM who has not elected the fixed annual fee alternative, the fixed annual fee will be increased and assessed to the surviving DPM / e-DPM entity. The amount of the increase will be based on the number of contracts traded and transaction fees paid during the previous twelve months by the DPM or e-DPM organization who had not previously elected the fixed annual fee alternative. For example, if in the previous twelve months a DPM or e-DPM organization who had not previously elected the fixed annual fee alternative traded 4 million equity option contracts and paid \$500,000 in transaction fees, the surviving DPM or e-DPM entity would be assessed an increase to their fixed annual fee in the amount of \$500,000.

The amount of the increase will be prorated based on the amount of time remaining in the then current year of the fixed annual fee program. For example, if the firms in the example above merge six months into the then current year of the program, the surviving DPM or e-DPM entity would be assessed an increase to their fixed annual fee in the amount of \$250,000 to cover the remaining six months of the year. The



Exchange notes that in any subsequent year of the program, the surviving entity will pay just one fixed annual fee (i.e., the fixed annual fee that is then in effect).

If two DPMs or e-DPMs who elected the fixed annual fee alternative merge or combine operations, the fixed fee paid to the CBOE by these two organizations will be unaffected. No adjustments or refunds will be made to either entity.

## 2. Statutory Basis

The CBOE believes that the proposed rule change, as amended, 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.

### 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.

---

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

<sup>10</sup> 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) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>12</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 furtherance of the purposes of the Act.<sup>13</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, 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-32 on the subject line.

---

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

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> See 15 U.S.C. 78s(b)(3)(C). 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 18, 2005, the date on which the Exchange submitted Amendment No. 1.

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-2005-32. 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-2005-32 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>14</sup>

Margaret H. McFarland  
Deputy Secretary

---

<sup>14</sup> 17 CFR 200.30-3(a)(12).