

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51749; File No. SR-CBOE-2005-31)

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 Thereto Relating to Transaction Fees in Options on the Russell 2000 Index

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 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 17, 2005, the CBOE filed Amendment No. 1 to the proposed rule change.³ 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,⁴ and Rule 19b-4(f)(2) thereunder,⁵ 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 Exchange made a few technical corrections to the purpose section and rule text of the proposed rule change and added a sentence to the purpose section to clarify the reason for the proposed reduction in the license fee. The effective date of the original proposed rule change is April 20, 2005, and the effective date of the amendment is May 17, 2005. 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 17, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 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 relating to transaction fees in options on the Russell 2000 Index ("RUT"). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEES SCHEDULE

[MARCH 2]APRIL 20, 2005

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

EQUITY OPTIONS (13):

I. – VIII. Unchanged.

QQQQ and SPDR OPTIONS:

I. – VI. Unchanged.

INDEX OPTIONS (includes Dow Jones DIAMONDS, OEF and other ETF and HOLDRs options):

I. CUSTOMER (2):

- S&P 100, PREMIUM > or = \$1\$0.35
- S&P 100, PREMIUM < \$1\$0.20
- MNX and NDX.....\$0.15
- RUT and REDUCED VALUE RUSSELL 2000\$0.15
- ETF and HOLDRs options (except DIA)\$0.15
- OTHER INDEXES, PREMIUM > OR = \$1\$0.45
- OTHER INDEXES, PREMIUM < \$1\$0.25

II.	MARKET-MAKER AND DPM – EXCLUDING DOW JONES PRODUCTS	
	(10).....	\$.24
	MARKET-MAKER – DOW JONES PRODUCTS (10).....	\$.34
III.	MEMBER FIRM PROPRIETARY: (11)	
	• FACILITATION OF CUSTOMER ORDER, MNX and NDX.....	\$.24
	• FACILITATION OF CUSTOMER ORDER, OTHER INDEXES	\$.20
	• NON-FACILITATION ORDER	\$.24
IV.	BROKER-DEALER (EXCLUDING THE PRODUCTS BELOW)	
INDEX CUSTOMER RATES	
	• ETF, <u>HOLDRS</u> , <u>RUT</u> and REDUCED VALUE RUSSELL 2000, PREMIUM > or = \$1	\$.45
	• ETF, <u>HOLDRS</u> , <u>RUT</u> and REDUCED VALUE RUSSELL 2000, PREMIUM < \$1.....	\$.25
	• MNX and NDX.....	\$.25
V.	NON-MEMBER MARKET MAKER:	
	• S&P 100 (including OEF), PREMIUM > or = \$1	\$.37
	• S&P 100 (including OEF), PREMIUM < \$1.....	\$.22
	• OTHER INDEXES, PREMIUM > or = \$1.....	\$.47
	• OTHER INDEXES, PREMIUM < \$1	\$.27
VI.	MNX and NDX LICENSE FEE (15).....	\$.10
VII.	RUT DPM and MARKET MAKER LICENSE FEE (Russell 2000 cash settled index) (12)	\$[.40]. <u>10</u>

VIII. LINKAGE ORDERS (8)(15):

- S&P 100 (OEF), PREMIUM > or = \$1\$.35
- S&P 100 (OEF), PREMIUM < \$1\$.20
- OTHER INDEXES, PREMIUM > OR = \$1\$.45
- OTHER INDEXES, PREMIUM < \$1\$.25

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) – (11) Unchanged.

(12) The RUT License [Transaction] Fee applies to all RUT contracts traded by the DPM and other Market-Makers. [The RUT DPM shall be assessed for any shortfall between the proceeds of the RUT License Fee and the Exchange’s license obligation to Russell.]

(13) – (15) Unchanged.

5. – 21. Unchanged.

Remainder of Fee Schedule – Unchanged.

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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 proposes to amend its Fees Schedule to reduce public customer transaction fees and the license fee assessed to the Designated Primary Market-Maker ("DPM") and market-makers in options on the RUT.

Specifically, the Exchange proposes to reduce public customer transaction fees to \$.15 per contract for transactions in RUT options. Currently, RUT customer transaction fees are \$.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 believes this proposed fee reduction will help the Exchange compete more effectively for order flow in the RUT product.

The Exchange also proposes to reduce from \$.40 per contract to \$.10 per contract the license fee that is currently assessed on all DPM and market-maker transactions in RUT options ("RUT License Fee"). The RUT License Fee is assessed by the Exchange to help it recoup the license fees the Exchange pays to the Frank Russell Company ("Russell") for its license to trade the RUT product.⁶ The Exchange recently renegotiated its license agreement with Russell. The license fees owed to Russell have been lowered in conjunction with the renegotiated agreement. As a result, the Exchange has determined to reduce the amount of the RUT License Fee as well as eliminate the requirement that the RUT DPM make up any shortfall between the proceeds of the RUT License Fee and the Exchange's license obligation to Russell.

⁶ See Securities Exchange Act Release No. 49601 (April 22, 2004), 69 FR 23836 (April 30, 2004) (SR-CBOE-2004-19).

The Exchange intends to implement these fee changes on May 1, 2005.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act⁷, in general, and furthers the objectives of Section 6(b)(4)⁸ of the Act 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 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 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 Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁰

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.¹¹

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ See supra note 3.

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-2005-31 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-2005-31. 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-2005-31 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.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).