

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-51880; File No. SR-CBOE-2005-38

June 20, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Sales Value 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 May 13, 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 and II below, which Items have been prepared by the CBOE. The Exchange filed a proposed rule change as a “non-controversial” rule change pursuant to Rule 19b-4(f)(6) under the Act,³ 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.

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

The CBOE proposes to amend its Fees Schedule and rules and issue a Regulatory Circular relating to its "Sales Value Fee." The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

CHICAGO BOARD OPTIONS EXCHANGE, INC.
FEES SCHEDULE
[MAY 2] MAY 13, 2005

1. - 4. Unchanged.

Notes: (1) – (15) Unchanged.

5. ETFs, STRUCTURED PRODUCTS, RIGHTS, WARRANTS (per round lot):

A) TRANSACTION FEES:		MAXIMUM FEE:
Customer	\$.00	N/A
Member Firm Proprietary	.10	\$100 per side
Market Maker	.05	\$100 per side

B) LISTING FEES:

Initial Fee (minimum)	\$10,000
Annual Fee	2,500 – 10,000

[C) SEC VALUE FEE:

\$0.00252 for every \$100 of value sold (seller only)]

6. SALES VALUE FEE:

The Sales Value Fee ("Fee") is assessed by CBOE to each member for sales of securities on CBOE with respect to which CBOE is obligated to pay a fee to the SEC under Section 31 of the Exchange Act. To the extent there may be any excess monies collected under this Section 6, the Exchange may retain those monies to help fund its general operating expenses. The sales transactions to which the Fee applies are sales of options (other than options on a security index), sales of non-option securities, and sales of securities resulting from the exercise of physical-delivery options traded on CBOE. The Fee is

collected indirectly from members through their clearing firms by OCC on behalf of CBOE with respect to options sales and options exercises. CBOE collects the Fee indirectly from members through their clearing firms with respect to non-option sales. Consistent with CBOE Rule 3.23, the Fee is collected by billing the member's designated clearing firm for the amount owed by the member to the Exchange. The amount of the Fee is calculated as described below.

Calculation of Fee for Options Sales and Options Exercises: The Sales Value Fee is equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period.

Calculation of Fee for Non-Options Sales: The Sales Value Fee is calculated using the same formula as the formula above for options transactions, except as applied only to the member's covered sales other than those resulting from options transactions.

6. – 9. Renumbered 7. – 10. Otherwise unchanged.

[10. {Reserved}]

11. – 23. Unchanged.

Remainder of Fee Schedule – Unchanged.

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CHAPTER XXX

Stocks, Warrants and Other Securities

[Rule 30.60. Securities and Exchange Commission Transaction Fee

There shall be paid to the Exchange by each member and member organization, in such manner and at such time as the Exchange shall direct, the sum of one cent for each \$300 or fraction

thereof of the dollar volume of securities sold by such member or member organization on the Exchange. The monies so paid to the Exchange shall be paid to the Securities and Exchange Commission as the transaction fee imposed upon the Exchange under the Exchange Act.

... Interpretations and Policies:

.01 The fee required to be paid under this Rule does not apply to any bond, debenture, or other evidence of indebtedness, or any security which the Securities and Exchange Commission may, by rule, exempt from imposition of the fee.]

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, Proposed Rule Change

1. Purpose

Pursuant to Section 5(c) of the CBOE Fees Schedule and CBOE Rule 30.60, the Exchange currently assesses a fee on its members for sales of securities on the Exchange to recoup amounts paid by the Exchange to the Commission under Section 31 of the Act.⁴ On June 28, 2004,⁵ the Commission established new procedures governing the calculation, payment, and collection of fees

⁴ 15 U.S.C. 78ee.

⁵ In the notice prepared by the CBOE in its Form 19b-4 filing, the CBOE inadvertently referred to this date as July 28, 2004. Telephone conversation between Jamie Galvin, Senior Attorney, CBOE and Hong-Anh Tran, Special Counsel, Division of Market Regulation (“Division”), Commission, dated May 17, 2005.

and assessments on securities transactions owed by national securities exchanges and associations under Section 31 of the Act ("Adopting Release").⁶ In the Adopting Release, the Commission stated that the fees SROs pass to their members and the fees members pass to their customers are not "Section 31 Fees" or "SEC Fees" and should not be labeled as such.⁷

In response to the statements made by the Commission in the Adopting Release, the Exchange proposes to amend its Fees Schedule to change the name of its fee, provide greater explanation and description of the fee and how it is collected, and clarify that it applies with respect to both covered sales of options and covered sales of non-option securities. The Exchange also proposes to delete CBOE Rule 30.60 since the fee will be set forth and fully described in the CBOE Fees Schedule.

Specifically, the Exchange proposes to delete Section 5(c) of the CBOE Fees Schedule, which is currently labeled "SEC Value Fee." The Exchange proposes to add a new CBOE Section 6 to the Fees Schedule labeled "Sales Value Fee." Proposed new CBOE Section 6 defines the Sales Value Fee ("Fee") as the fee assessed by CBOE to each member for sales of securities on CBOE with respect to which CBOE is obligated to pay a fee to the SEC under Section 31 of the Act. Proposed CBOE Section 6 provides that, to the extent the Exchange may collect more from members under CBOE Section 6 than is due from the Exchange to the Commission under Section 31 of the Act, for example due to rounding differences, the excess monies collected may be used by the Exchange to fund its general operating expenses.

Proposed CBOE Section 6 explains that the transactions to which the Fee applies are sales of options (other than options on a security index), sales of non-option securities, and sales

⁶ See Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060 (July 7, 2004).

⁷ Id. at 41072.

of securities resulting from the exercise of physical-delivery options traded on CBOE. The Fee is collected indirectly from members through their clearing firms by the Options Clearing Corporation ("OCC") on behalf of the Exchange with respect to options sales and options exercises. The Exchange collects the Fee indirectly from members through their clearing firms with respect to non-option sales. Consistent with CBOE Rule 3.23, the Fee is collected by billing the member's designated clearing firm for the amount owed by the member to the Exchange.

Proposed CBOE Section 6 also sets forth the formula for calculating the Fee with respect to covered options and non-options transactions. The Fee with respect to options sales and options exercises is equal to (i) the Commission's Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period. The Fee with respect to non-options sales is calculated using the same formula as the formula for options transactions, except as applied only to the member's covered sales other than those resulting from options transactions. The Exchange notes that, if the Commission's Section 31 fee rate changes in the middle of a month, the Exchange will perform a separate calculation with respect to covered sales under the new fee rate for the remaining portion of the month.

In further response to the statements made by the Commission in the Adopting Release, the Exchange proposes to issue a Regulatory Circular to its members that prohibits members from characterizing the pass-through of the CBOE Sales Value Fee to their customers as a "Section 31 fee," "SEC fee," or other label that implies an SEC rule or requirement that these funds be collected from broker-dealers or customers. The proposed Regulatory Circular would become effective approximately 45 days following effectiveness of the proposed rule change.

2. Statutory Basis

The Exchange believes that for this proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ which permits the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and issuers and other persons using its facilities. In addition, the Exchange believes that the proposed rule change, including the proposed Regulatory Circular, is consistent with Section 6(b)(5) of the Act⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder¹¹ because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

and the public interest). A proposed rule change filed under 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange satisfied the five-day pre-filing requirement. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),¹² and designate the proposed rule change to become operative immediately.

The Commission hereby grants that request.¹³ The Commission believes that waiving the 30-day operative date is consistent with the protection of investors and the public interest because doing so will allow the Exchange's Fees Schedule and Rules to be consistent with the Commission's guidance on Section 31 without undue delay.

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.

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:

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 C.S.C. 78c(f).

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-2005-38 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-38. 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-2005-38 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

Jill M. Peterson
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).