

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-52073; File No. SR-CBOE-2005-54)**

**July 20, 2005**

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to an Extension of the Linkage Fee Pilot Program**

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 July 12, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "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 Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and is approving the proposed rule change on an accelerated basis.

**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 extend until July 31, 2006 the current pilot program applicable to options intermarket linkage ("Linkage") fees. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, 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 III

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

The Exchange's fees for Principal ("P") and Principal Acting as Agent ("P/A") orders<sup>3</sup> are operating under a pilot program scheduled to expire on July 31, 2005.<sup>4</sup> The Exchange proposes to amend its Fees Schedule to extend the pilot program until July 31, 2006.<sup>5</sup>

Pursuant to the current pilot program, the Exchange assesses its members the following Linkage order fees: (i) \$.24 per contract transaction fee for equity, QQQQ and SPDR options, (ii) \$.35 or \$.20 per contract, depending on the premium, for OEF options and \$.45 or \$.25 per contract, depending on the premium, for other index options, (iii) \$.04 per contract floor brokerage fee, if any portion of a Linkage order is manually handled, (iv) \$.30 per contract RAES access fee, if a linkage

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<sup>3</sup> Under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage ("Plan") and Exchange Rule 6.80(12), which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel Order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

- (i) "P/A Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;
- (ii) "P Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and
- (iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

<sup>4</sup> See Securities Exchange Act Release No. 50048 (July 20, 2004), 69 FR 45102 (July 28, 2004)(SR-CBOE-2004-40).

<sup>5</sup> The Exchange also proposes the correction of a typographical error in the text of Footnote 8 of the CBOE Fees Schedule.

order is executed in whole or in part on RAES, and (v) \$.10 license fee on transactions in MNX and NDX options.<sup>6</sup> Satisfaction Orders are not assessed Exchange fees.

The Exchange believes that extension of the Linkage fee pilot program until July 31, 2006 will give the Exchange and the Commission further opportunity to evaluate the appropriateness of Linkage fees.

2. Statutory Basis.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>8</sup> 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 and other persons using its facilities.

**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. 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:

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<sup>6</sup> See CBOE Fees Schedule, Footnote 15.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

- 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-2005-54 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2005-54. 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, 100 F Street, NE, Washington, DC 20549. 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-2005-54 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

#### **IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,<sup>9</sup> and, in particular, with the requirements of Section 6(b) of the Act<sup>10</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006 will give the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The Commission believes that granting accelerating approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the CBOE and the Commission further consider the appropriateness of Linkage fees.

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<sup>9</sup> In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

**V. Conclusion**

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>13</sup> that the proposed rule change (SR-CBOE-2005-54) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Jonathan G. Katz  
Secretary

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<sup>13</sup> Id.

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