

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52643; File No. SR-CBOE-2005-71)

October 20, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Transaction Fees Assessed on DIAMONDS Options

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 September 1, 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 September 8, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.³ On October 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.⁷ The Commission is publishing this notice to solicit

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made a technical change to the proposed rule text.

⁴ In Amendment No. 2, the Exchange revised the proposed rule text to amend the transaction fees assessed to non-member market makers for orders in DIA options sent to CBOE through the Intermarket Options Linkage (“Linkage”) and outside of Linkage. The Exchange states that the transaction fees assessed to non-member market-makers for orders in DIA options sent to CBOE through Linkage or outside of Linkage will be implemented on November 1, 2005.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ The effective date of the original proposed rule change is September 1, 2005, the effective date of Amendment No. 1 is September 8, 2005, and the effective date of Amendment No. 2 is October 17, 2005. For purposes of calculating the 60-day period

comments on the proposed rule change, as amended, from interested persons.

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 fees for options on the DIAMONDS[®] ("DIA"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room. The text of the proposed rule change is also included below. Proposed new language is *italicized*; proposed deletions are in [brackets].

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEES SCHEDULE

[AUGUST 24]SEPTEMBER 1, 2005

- | | | |
|----|--|--------------|
| 1. | OPTIONS TRANSACTION FEES (1)(3)(4)(7)(16): | PER CONTRACT |
| | EQUITY OPTIONS (13): | |
| | I – IX. Unchanged. | |
| | QQQQ and SPDR OPTIONS: | |
| | I - VII. Unchanged. | |
| | INDEX OPTIONS (includes Dow Jones DIAMONDS, OEF and other ETF and
HOLDERS options): | |
| | I. CUSTOMER (2): | |
| | <ul style="list-style-type: none"> • S&P 100, PREMIUM > or = \$1 | \$0.35 |

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

• S&P 100, PREMIUM < \$1	\$.20
• MNX and NDX.....	\$.15
• RUT and [REDUCED VALUE RUSSELL 2000] <u>RMN</u>	\$.15
• ETF and HOLDRs options [(except DIA)].....	\$.15
• OTHER INDEXES, PREMIUM > OR = \$1	\$.45
• OTHER INDEXES, PREMIUM < \$1	\$.25
II. MARKET-MAKER AND DPM – EXCLUDING DOW JONES PRODUCTS	
<u>OTHER THAN DIA</u> (10)	\$.24
MARKET-MAKER – DOW JONES PRODUCTS (<u>except DIA</u>) (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>except DIA</u>), HOLDRS, RUT and [REDUCED VALUE RUSSELL 2000] <u>RMN</u> , PREMIUM > or = \$1	\$.45
• ETF (<u>except DIA</u>), HOLDRS, RUT and [REDUCED VALUE RUSSELL 2000] <u>RMN</u> , PREMIUM < \$1	\$.25
• <u>DIA</u> , MNX and NDX.....	\$.25
V. NON-MEMBER MARKET MAKER:	
• <u>DIA</u>	\$.26
• 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) \$.10
- VIII. LINKAGE ORDERS (8)(15):
- DIA \$.26
 - 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, RMM, e-DPM & DPM MARKETING FEE (in option classes in which a DPM has been appointed)(6)(16): Unchanged.
3. FLOOR BROKERAGE FEE (1)(5)(16): Unchanged.
4. RAES ACCESS FEE (RETAIL AUTOMATIC EXECUTION SYSTEM) (1)(4)(16): Unchanged.

* * * * *

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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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 amend certain fees for DIA options. Specifically, the Exchange proposes to reduce customer and broker-dealer fees for transactions in DIA options, amend non-member market-maker fees for orders in DIA options sent to CBOE through Linkage and outside of Linkage,⁸ and eliminate the market-maker license fee surcharge applicable to transactions in DIA options.

In particular, the transaction fees for public customer transactions in DIA options are currently \$.45 per contract if the premium is equal to or greater than \$1, and \$.25 per contract if the premium is less than \$1. The Exchange proposes to reduce the transaction fees for public customer transactions in DIA options to \$.15 per contract, regardless of the premium. Moreover, the transaction fees for broker-dealer transactions in DIA options are currently \$.45 per contract if the premium is equal to or greater than \$1, and \$.25 per contract if the premium is less than \$1. The Exchange proposes to reduce the transaction fees for broker-dealer transactions in DIA options to \$.25 per contract, regardless of the premium. Further, the transaction fees for non-member market-maker transactions in DIA options are currently \$.47 per contract if the premium is greater than or equal to \$1, and \$.27 per contract if the premium is less than \$1. The transaction fees assessed to non-member market-makers for orders in DIA options sent to CBOE through Linkage are currently \$.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 proposes to change both the non-

⁸ See Amendment No. 2, supra note 4.

member market maker transaction fee and the Linkage transaction fee for transactions in DIA options to \$.26 per contract, regardless of the premium.⁹

In addition, the Exchange currently charges market-makers that trade Dow Jones products, including DIA options, a license fee of \$.10 per contract in addition to the regular transaction fee of \$.24 per contract, to assist the Exchange in offsetting some of the royalty fees the Exchange must pay to Dow Jones for its license to trade Dow Jones products.¹⁰ The Exchange proposes to eliminate the \$.10 license fee solely with respect to market-maker transactions in DIA options.¹¹

The proposed rule change, as amended, is intended to establish fees for CBOE's DIA options that will be competitive with fees charged by other exchanges for transactions in DIA options.

The Exchange also proposes to make a minor technical amendment to its Fees Schedule to change references relating to "Reduced Value Russell 2000" options to its ticker symbol, "RMN."

2. Statutory Basis

The CBOE believes that the proposed rule change, as amended, is consistent with Section

⁹ See Amendment No. 2, *supra* note 4. According to CBOE, the proposed changes to the transaction fees assessed to non-member market-makers for orders in DIA options sent to CBOE through Linkage or outside of Linkage will be implemented on November 1, 2005.

¹⁰ See Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978, 44979 (July 31, 2003).

¹¹ The Commission notes that the Exchange currently charges market-makers that trade Dow Jones products, including DIA options, a total fee of \$.34 per contract, which reflects a \$.10 licensing fee surcharge. Under the proposed rule change, the fee for market-makers that trade DIA options will be \$.24 per contract.

6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(4) of the Act,¹³ 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.

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, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and Rule 19b-4(f)(2)¹⁵ thereunder, because it establishes or changes a due, fee or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission.¹⁶ At any time within 60 days of the filing of the proposed rule change, as amended, 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.¹⁷

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ See supra note 7.

¹⁷ Id.

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-2005-71 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-2005-71. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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-2005-71 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.¹⁸

Jonathan G. Katz
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).