

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52851; File No. SR-CBOE-2005-84)

November 29, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Transaction Fees for Options on the Dow Jones Industrial Average

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 October 11, 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 November 22, 2005, the CBOE submitted 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.⁶ 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 revised the proposed rule text to amend the fees assessed to non-member market-makers for transactions in options on the Dow Jones Industrial Average (“DJX options”) and in “Jumbo” options on the Dow Jones Industrial Average (“DXL options”). The Exchange states that this change in fees assessed to non-member market-makers for transactions in DJX options and DXL options will be implemented on December 1, 2005.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ The effective date of the original proposed rule change is October 11, 2005, and the effective date of Amendment No. 1 is November 22, 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 November 22, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 to: (i) amend certain fees for DJX options, and (ii) establish fees for DXL options. 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 underlined; proposed deletions are in [brackets].

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEES SCHEDULE

[OCTOBER 1, 2005] NOVEMBER 2, 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 HOLDRs options) (17): | |
| | I. CUSTOMER (2): | |
| | <ul style="list-style-type: none"> • S&P 100, PREMIUM > or = \$1\$35 • S&P 100, PREMIUM < \$1\$20 • <u>DJX, MNX, [and] NDX, RUT and RMN</u>.....\$15 | |

•	[RUT and RMN	\$.15]
•	ETF and HOLDRs options.....	\$.15
•	OTHER INDEXES, PREMIUM > OR = \$1	\$.45
•	OTHER INDEXES, PREMIUM < \$1	\$.25
II.	MARKET-MAKER AND DPM (10): [–EXCLUDING DOW JONES PRODUCTS OTHER THAN DIA (10)\$.	24]
	[MARKET-MAKER – DOW JONES PRODUCTS (except DIA) (10)	\$.34]
•	<u>DOW JONES PRODUCTS (except DIA and DJX)</u>	\$.34
•	<u>OTHER INDEXES</u>	\$.24
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	
•	<u>DJX</u> , ETF (except DIA), HOLDRS, RUT and RMN, PREMIUM > or = \$1	\$.45
•	<u>DJX</u> , ETF (except DIA), HOLDRS, RUT and RMN, PREMIUM < \$1	\$.25
•	DIA, MNX and NDX.....	\$.25
V.	NON-MEMBER MARKET MAKER:	
•	DIA and <u>DJX</u>	\$.26
•	<u>DXL</u>	\$.36
•	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. – IX. Unchanged.

- 2. MARKETING FEE (6)(16)\$.22
- 3. FLOOR BROKERAGE FEE (1)(5)(16)(17):
 - EQUITY & QQQQ CUSTOMER ORDER.....\$.00
 - ALL OTHER EQUITY, QQQQ AND INDEX OPTIONS (8)\$.04
 - CROSSED ORDERS.....\$.02
- 4. RAES ACCESS FEE (RETAIL AUTOMATIC EXECUTION SYSTEM) (1)(4)(16):
 - INDEX CUSTOMER TRANSACTIONS.....\$.25
 - DOW JONES, ASSESSED ON THE FIRST 25 CONTRACTS ONLY
 - NON-CUSTOMER TRANSACTIONS (ORIGIN CODE OTHER THAN “C”)(8)(9)
 -\$.30

FOOTNOTES: Unchanged.

5. – 6. Unchanged.

- 7. INDEXES CUSTOMER ORDER BOOK OFFICIAL (OBO) EXECUTION FEES(16)(17):

	Rate Per Contract (1)
Accommodation Liquidation Or Cabinet Order	\$.10
All Other Orders	.25

(1) OEX – No charge for “market” and “limit orders” placed with the OBO prior to the opening and executed during opening rotation.

Other Indexes – Same as above for index “market orders” (“limit orders” not included).

Remainder of Fees Schedule – 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 Exchange 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 Exchange 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 and eliminate certain fees for DJX options and to establish fees for DXL options.

a. DJX Options Fees

The Exchange proposes to reduce customer and non-member market-maker fees for transactions in DJX options and eliminate the market-maker license fee surcharge applicable to transactions in DJX options.

Currently, customer transaction fees for transactions in DJX options are \$.45 if the premium is greater than or equal to \$1 and \$.25 if the premium is less than \$1. The Exchange proposes to reduce fees for public customer transactions in DJX options to \$.15 per contract.

Moreover, the transaction fees for non-member market-maker transactions in DJX 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 Exchange proposes to reduce the non-member market maker transaction fee for transactions in DJX options to \$.26 per contract, regardless of the premium.⁷

In addition, the Exchange currently charges market-makers that trade Dow Jones products, except options on DIAMONDS ("DIA"), 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.⁸ The Exchange proposes to eliminate the \$.10 license fee with respect to market-maker transactions in DJX options.⁹

The Exchange is reducing these fees in connection with DJX options moving to CBOE's Hybrid Trading System.¹⁰ The proposed fees changes are intended to make DJX options competitively priced with respect to DIA options.

b. DXL Options

The Exchange launched trading in DXL options on October 11, 2005.¹¹ DXL options are

⁷ See Amendment No. 1, supra note 3. According to CBOE, the proposed change to the fees assessed to non-member market-makers for transactions in DJX options will be implemented on December 1, 2005.

⁸ See Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978, 44979 (July 31, 2003).

⁹ The Commission notes that the Exchange currently charges market-makers that trade Dow Jones products, except 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 DJX options will be \$.24 per contract.

¹⁰ Conversation between Jaime Galvan, Assistant Secretary, CBOE and Sara Gillis, Attorney, Division of Market Regulation, Commission on November 23, 2005.

¹¹ Id.

options that are based on one-tenth the value of the Dow Jones Industrial Average ("DJIA").¹² DXL options will trade in open outcry. The Exchange proposes to amend its Fees Schedule to establish fees for DXL options.

Specifically, the Exchange proposes to assess public customers a transaction fee for DXL options of \$.45 if the premium is greater than or equal to \$1 and \$.25 if the premium is less than \$1. Market-maker transaction fees for DXL options will be \$.34, which consists of the standard \$.24 transaction fee and the \$.10 license fee surcharge assessed on certain Dow Jones index options as described above. Non-member market-maker transaction fees for DXL options will be \$.36, regardless of the premium.¹³

Member firm proprietary transaction fees for DXL options will be \$.20 for facilitation of customer orders and \$.24 for non-facilitation orders. Broker-dealer transaction fees for DXL options will be \$.45 if the premium is greater than or equal to \$1 and \$.25 if the premium is less than \$1.

The floor brokerage fee for DXL options will be \$.04, and for crossed orders, the floor brokerage fee will be \$.02. The RAES Access Fee will be \$.25 for customer transactions (only the first 25 contracts will be assessed) and \$.30 for non-customer transactions. Order Book

¹² DXL options are referred to as "Jumbo-DJX" options because they are ten times larger than DJX options (DJX options are based on 1/100th the value of the DJIA).

¹³ See Amendment No. 1, supra note 3. CBOE had originally proposed to charge non-member market-makers a transaction fee for transactions in DXL options of \$.47 per contract if the premium was greater than or equal to \$1 and \$.27 per contract if the premium was less than \$1. In Amendment No. 1, CBOE proposed to change the non-member market-maker transaction fees for DXL options to \$.36 per contract, regardless of the premium. According to CBOE, the proposed change to the fees assessed to non-member market-makers for transactions in DXL options will be implemented on December 1, 2005.

Official ("OBO") execution fees will be \$.10 per contract for cabinet and accommodation/liquidation trades and \$.25 per contract for all other orders.

2. Statutory Basis

The CBOE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁵ 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

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.

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 Act¹⁶ and Rule 19b-4(f)(2)¹⁷ 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.¹⁸ At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ See supra note 6.

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.¹⁹

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-2005-84 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-2005-84. 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

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Id.

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-2005-84 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.²⁰

Jonathan G. Katz
Secretary

²⁰ 17 CFR 200.30-3(a)(12).