

Any interested person may, on or before May 31, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-15025 or;

#### 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 1-15025. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing<sup>5</sup> on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-2269 Filed 5-9-05; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51650; File No. SR-CBOE-2005-34]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Amending Its Marketing Fee Relating to Remote Market-Makers

May 3, 2005.

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 April 25, 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, II and III below, which Items have been prepared by the CBOE. On April 26, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> 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.

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

The Exchange proposes to amend its marketing fee to impose the fee on transactions of Remote Market-Makers ("RMMs"). The marketing fee will be assessed at the rate of \$.22 per contract on all classes of equity options, options on HOLDRs®, and options on SPDRs®. The fee will not apply to Market-Maker-to-Market-Maker transactions. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*.

#### CHICAGO BOARD OPTIONS EXCHANGE, INC.

##### FEE SCHEDULE

1. No change.
2. MARKET-MAKER, RMM, e-DPM & DPM MARKETING FEE (in option

classes in which a DPM has been appointed)(6).....\$.22

3.-4. No change.

NOTES:

(1)-(5) No change.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, RMMs, e-DPMs and DPMs at the rate of \$.22 per contract on all classes of equity options, options on HOLDRs®, and options on SPDRs®. The fee will not apply to Market-Maker-to-Market-Maker transactions. This fee shall not apply to index options and options on ETFs (other than options on SPDRs). Should any surplus of the marketing fees at the end of each month occur, the Exchange would then refund such surplus at the end of the month if any, on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs and DPMs.

(7)-(15) No change.

\* \* \* \* \*

#### 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 its proposal and discussed any comments it had received regarding the proposal. 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

On October 29, 2004, the CBOE amended its marketing fee program.<sup>6</sup> The current marketing fee is assessed upon Designated Primary Market-Makers ("DPMs"), electronic Designated Primary Market-Makers ("e-DPMs"), and Market-Makers at a rate of \$.22 for every contract they enter into on the Exchange other than Market-Maker-to-Market-Maker transactions (which includes all transactions between any combination of DPMs, e-DPMs, and Market-Makers). The marketing fee is assessed in all equity option classes, options on HOLDRs®,<sup>7</sup> and options on

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

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

<sup>3</sup> In Amendment No. 1, the CBOE made technical corrections to the rule text of the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> For a description of the CBOE's marketing fee program, see Securities Exchange Act Release No. 50736 (Nov. 24, 2004), 69 FR 69966 (Dec. 1, 2004) (SR-CBOE-2004-68).

<sup>7</sup> HOLDRs are trust-issued receipts that represent an investor's beneficial ownership of a specified

Continued

<sup>5</sup> 17 CFR 200.30-3(a)(1).

SPDRs®.<sup>8</sup> The Exchange recently established a new membership status called RMMs.<sup>9</sup> The RMM program allows individuals and member organizations to stream quotes into designated Hybrid 2.0 classes from locations outside of the Exchange's physical trading crowds. RMMs may create customized class appointments, called virtual trading crowds ("VTCs"), which allow them to cover a range of classes irrespective of their geographic locations on the CBOE trading floor.<sup>10</sup>

This proposed rule change amends the marketing fee program to include RMMs in the classification of Exchange members subject to the marketing fee. The Exchange states that the purpose of the marketing fee plan is to provide the members of the Exchange with the ability to compete for the opportunity to trade with those orders that may otherwise be routed to other exchanges. The marketing fee will be assessed whereby DPMs, e-DPMs, RMMs, and Market-Makers will be debited \$.22 for every contract they enter into on the Exchange other than Market-Maker-to-Market-Maker transactions (which includes all transactions between any combination of DPMs, e-DPMs, RMMs, and Market-Makers).

According to the Exchange, all funds generated by the marketing fee will be collected by the Exchange and recorded according to the DPM, station, and class ("Trading Crowds") where the options subject to the fee are traded. The money collected will be disbursed by the Exchange according to the instructions of the DPM. The CBOE states that those funds will be available to the DPM solely for those Trading Crowds where the fee was assessed and may only be used by that DPM to attract orders in the classes of options where the DPM is appointed. Funds collected from RMMs and e-DPMs will be used to attract order flow for the classes in which the RMM and e-DPM are appointed. The Exchanges notes that its Board of Directors has previously established a Marketing Fee Oversight Committee, which will conduct a quarterly review to determine the effectiveness of the marketing fee and which may

group of stocks. See Interpretation .07 to CBOE Rule 5.3.

<sup>8</sup> See Securities Exchange Act Release No. 51052 (Jan. 18, 2005), 70 FR 3757 (Jan. 26, 2005) (SR-CBOE-2005-05).

<sup>9</sup> See Securities Exchange Act Release No. 51366 (Mar. 14, 2005), 70 FR 13217 (Mar. 18, 2005) (SR-CBOE-2004-75).

<sup>10</sup> On April 19, 2005, the SEC granted accelerated approval to SR-CBOE-2005-23, amending CBOE Rule 8.4 to remove the Physical Trading Crowd appointment alternative for RMMs. See Securities Exchange Act Release No. 51543 (Apr. 14, 2005), 70 FR 20952 (Apr. 22, 2005) (SR-CBOE-2005-23).

recommend to the Exchange that it modify the fee in the future based upon its effectiveness.

As in the current marketing fee program, the Exchange states that it will not be involved in the determination of the terms governing the orders that qualify for payment with any payment accepting firm or the amount of any such payment. The Exchange will provide administrative support for the program in such matters as maintaining the funds, keeping track of the number of qualified orders each firm directs to the Exchange, and making the necessary debits and credits to the accounts of the traders and the payment accepting firms to reflect the payments that are made. The Exchange states that fees collected during a calendar month shall only be available to the DPM for payment for that calendar month's order flow.

The Exchange believes that it is important to note that Exchange Market-Makers, RMMs, DPMs, and e-DPMs will have no way of identifying prior to execution whether a particular order is from a payment-accepting firm, or from a firm that does not accept payment for their order flow.

Consistent with the current marketing fee, the Exchange states that it will continue to refund any surplus at the end of the month on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs, and DPMs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the CBOE's members.

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

The Exchange 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

The CBOE neither solicited nor received written comments with respect to the proposed rule change, as amended.

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

<sup>12</sup> 15 U.S.C. 78f(b)(4).

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>14</sup> Accordingly, the proposal will take effect upon filing with the Commission. 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.<sup>15</sup>

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-34 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-2005-34. 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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 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 April 26, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

change, as amended, 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 the 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-2005-34 and should be submitted on or before May 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-2239 Filed 5-9-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51643; File No. SR-FICC-2005-01]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Timely Notification of Significant Events That Effect a Change in Control of a Member or Could Have a Substantial Impact on a Member's Business or Financial Condition

May 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 6, 2005, the Fixed Income Clearing Corporation ("FICC") 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 primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change would require certain FICC members to notify FICC when they experience an event that would effect a change in control of such member or could have a substantial impact on such member's business or financial condition.

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

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

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

Currently, FICC's Government Securities Division's ("GSD") rules require a member to "promptly" inform FICC when they experience a "material change in control or financial condition."<sup>3</sup> FICC's Mortgage-Backed Securities Division's ("MBSD") rules do not contain any similar requirements.

FICC believes that the GSD rule does not cover a broad-enough scope of events that FICC should be aware of in order to properly manage the risks that such events might pose to FICC and its membership. In addition, FICC believes that the current rule is not effectively enforceable because the terms "promptly" and "material change in control or financial condition" are not adequately defined.

Under the proposed rule change, GSD netting members and MBSD clearing members would be required to provide oral and written notification to FICC upon experiencing a "Reportable Event." The term "Reportable Event" would be defined as an event that would effect a change in control of a GSD netting member or an MBSD clearing member or an event that could have a substantial impact on those types of member's business or financial condition including, but not limited to: (a) Material organizational changes including mergers, acquisitions, changes

in corporate form, name changes, changes in the ownership of a netting or clearing member or its affiliates, and material changes in management; (b) material changes in business lines, including new business lines undertaken; and (c) status as a defendant in litigation which could reasonably impact the netting or clearing member's financial condition or ability to conduct business.<sup>4</sup>

In order to provide FICC with enough time to analyze the implications of a Reportable Event and to determine an appropriate course of action, FICC believes that it is important for it to learn of a Reportable Event as soon as possible. As such, a netting or clearing member must submit written notice to FICC at least 90 calendar days prior to the effective date of such Reportable Event unless the member demonstrates that it could not have reasonably done so and also provides oral and written notice to FICC as soon as possible. Failure to so notify FICC would result in a \$5,000 fine.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it should enhance FICC's ability to collect and evaluate the type of information that it needs to be aware of in order to properly manage risks and enforce its rules, thereby assuring the safeguarding of securities and funds for which FICC is in control.

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

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments it receives.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>3</sup> GSD Rule 3, Section 4.

<sup>4</sup> A similar requirement was added as Addendum T to the National Securities Clearing Corporation's rules in 1998. Securities Exchange Act Release No. 40582 (Oct. 20, 1998), 63 FR 57346 (Oct. 27, 1998).