

of the Act,¹² in particular, in that it is designed 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 particular, Amex believes that the proposed cancellation fee will allow the Exchange to more equitably recover systems capacity costs from its members.

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

Amex 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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁴ since it establishes or changes a due, fee or other charge imposed by the Exchange.

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 furtherance of the purposes of the Act.¹⁵

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-Amex-2005-085 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-Amex-2005-085. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2005-085 and should be submitted on or before October 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52532; File No. SR-CBOE-2005-75]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Remote Market-Maker Transaction Fees

September 29, 2005.

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 9, 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 Exchange. On September 26, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.³ The CBOE has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal, as amended, effective upon filing with the Commission. 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 CBOE proposes to amend its Fees Schedule to establish a Remote Market-Maker transaction fee for index options, options on exchange-traded funds ("ETFs") and options on Holding Company Depository Receipts ("HOLDRs"). Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc.; Fees Schedule

September [1]9, 2005

- 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): I.-VIII. Unchanged. IX. Remote Market-Maker—\$.26
 - Marketing Fee (6)(16): Unchanged.
 - Floor Brokerage Fee (1)(5)(16): Unchanged.
 - RAES Access Fee (Retail Automatic Execution System) (1)(4)(16): Unchanged.
- Footnotes: (1)-(16) Unchanged.

³ In Amendment No. 1, CBOE revised the purpose section of the proposed rule change to clarify the rationale for the distinction between the transaction fee for on-floor market-makers and remote market-makers.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2)

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ See *supra* note 4.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Remainder of Fee 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 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

In April 2005, the Exchange established a transaction fee for Remote-Market-Makers ("RMMs") in equity, QQQQ and SPDR options at \$.26 per contract.⁶ An RMM is an individual member or member organization registered with the Exchange that makes transactions as a dealer-specialist from a location other than the physical trading station for the subject option class.

The Exchange proposes to amend its Fees Schedule to establish a \$.26 per contract RMM transaction fee for index options, options on ETFs (all other options on ETFs traded on the Exchange besides QQQQ and SPDR options) and options on HOLDRs. The proposed fee will apply to RMM transactions in any index, ETF and HOLDRs options class that the Exchange determines to add to its Hybrid 2.0 trading platform. The Exchange believes the proposed RMM transaction fee is appropriately set higher than those of on-floor market-makers because the Exchange will incur additional systems and other logistical costs both initially and on an ongoing basis in order to establish and maintain the infrastructure needed to enable market participation as an RMM.

2. Statutory Basis

The CBOE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),⁷ in general, and furthers the objectives of Section 6(b)(4)⁸ of the Act in particular,

in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its 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 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

Because the foregoing proposed 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) of the Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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.¹¹

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:

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 SR-CBOE-2005-75 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 SR-CBOE-2005-75. 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 Room, 100 F Street, NE., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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 SR-CBOE-2005-75 and should be submitted on or before October 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jonathan G. Katz,
Secretary.

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⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 19b-4(f)(2).

¹¹ The effective date of the original proposed rule change is September 9, 2005, and the effective date of Amendment No. 1 is September 26, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on September 26, 2005, the date on which the Exchange submitted Amendment No. 1.

¹² 17 CFR 200.30-3(a)(12).

⁶ See Securities Exchange Act Release No. 51746 (May 26, 2005), 70 FR 32855 (June 6, 2005).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).