

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

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[FR Doc. 06-8038 Filed 9-21-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54465; File No. SR-CBOE-2006-76]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Marketing Fee Program

September 18, 2006.

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 September 1, 2006, 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 Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 from interested persons.

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

CBOE proposes to amend its marketing fee program. Below is the text of the proposed rule change. Proposed new language is in *italics*; deleted language is in [brackets].

#### Chicago Board Options Exchange, Inc.

##### Fees Schedule

[August 29] *September 1, 2006*

1. No Change.
2. Marketing Fee (6)(16): \$.65
- 3.-4. No Change.

##### FOOTNOTES:

- (1)–(5) No Change.

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

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

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

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

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

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from [orders for less than 1,000 contracts] (i) *orders for less than 1,000 contracts* from payment accepting firms, or (ii) *customer orders for less than 1,000 contracts* that have designated a “Preferred Market-Maker” under CBOE Rule 8.13 at the rate of \$.65 per contract on all classes of equity options, options on HOLDRs, options on SPDRs, options on DIA, options on NDX, and options on RUT. The fee will not apply to: Market-Maker-to-Market-Maker transactions including transactions resulting from orders from non-member market-makers; transactions resulting from inbound P/A orders or a transaction resulting from the execution of an order against the DPM’s account if an order directly related to that order is represented and executed through the Linkage Plan using the DPM’s account; transactions resulting from accommodation liquidations (cabinet trades); and transactions resulting from dividend strategies, merger strategies, and short stock interest strategies as defined in footnote 13 of this Fees Schedule. This fee shall not apply to index options and options on ETFs (other than options on SPDRs, options on DIA, options on NDX, and options on RUT). A Preferred Market-Maker will only be given access to the marketing fee funds generated from a Preferred order if the Preferred Market-Maker has an appointment in the class in which the Preferred order is received and executed.

Rebate/Carryover Process. If less than 80% of the marketing fee funds collected in a given month is paid out by the DPM/LMM or Preferred Market-Maker in a given month, then the Exchange would refund such surplus at the end of the month on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs, DPMs and LMMs in that month. However, if 80% or more of the funds collected in a given month is paid out by the DPM/LMM or Preferred Market-Maker, there will not be a rebate for that month and the excess funds will be included in an Excess Pool of funds to be used by the DPM/LMM or Preferred Market-Maker in subsequent months. The total balance of the Excess Pool of funds for a DPM/LMM cannot exceed \$25,000, and the total balance of the Excess Pool of funds for a Preferred Market-Maker cannot exceed \$80,000. If in any month the DPM/LMM Excess Pool balance were to exceed \$25,000, or the Preferred Market-Maker Excess Pool balance were to exceed \$80,000, the funds in excess of

\$25,000 or \$80,000, respectively, would be refunded on a pro rata basis based upon contributions made by the Market-Makers, RMMs, DPMs, e-DPMs and LMMs in that month.

CBOE’s marketing fee program as described above will be in effect until June 2, 2007.

Remainder of Fees Schedule—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 Exchange 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. 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

CBOE proposes to amend its marketing fee program as it relates to orders designating a “Preferred Market-Maker” under CBOE Rule 8.13. Going forward, CBOE proposes to assess the fee only on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs (collectively “Market-Makers”) resulting from customer orders<sup>5</sup> for less than 1,000 contracts that have designated a “Preferred Market-Maker” under CBOE Rule 8.13. The Exchange states that previously, transactions of Market-Makers resulting from all orders of 1,000 contracts or less that have designated a “Preferred Market-Maker” under CBOE Rule 8.13 were assessed the marketing fee. CBOE would continue to assess the fee on transactions of Market-Makers resulting from orders for less than 1,000 contracts from payment accepting firms.

CBOE states that it is not amending its marketing fee program in any other respects.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

<sup>5</sup> CBOE represents that, as used in its Fees Schedule, the term “customer” refers to a public customer. Telephone conference between David Liu, Special Counsel, Division of Market Regulation, Commission, and Patrick Sexton, Associate General Counsel, Exchange, on September 12, 2006.

Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>7</sup> 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 Exchange does not believe that the proposed rule change 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 Exchange neither solicited nor received comments on the proposal.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> 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. At any time within 60 days of the filing of such 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.

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2006-76 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-76. 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 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-2006-76 and should be submitted on or before October 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 06-8037 Filed 9-21-06; 8:45 am]

**BILLING CODE 8010-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54459; File No. SR-NASDAQ-2006-035]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Existing Rules for Portfolio Depository Receipts, Index Fund Shares, and Index-Linked Securities**

September 15, 2006.

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 September 14, 2006, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

Nasdaq proposes to amend its existing rules for portfolio depository receipts, index fund shares, and index-linked securities to provide that an eligible index may be calculated following a methodology weighting components based on one or more of the following: Sales, cash flow, book value, and dividends.

The text of the proposed rule change is below. Proposed new language is italicized; there are no proposed deletions.<sup>3</sup>

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#### **4420. Quantitative Listing Criteria**

- (a)-(h) No Change.
- (i) Portfolio Depository Receipts
- (1)-(2) No Change.
- (3)(A) No Change.
- (3)(B) Index Methodology and Calculation
- (i) The index underlying a series of Portfolio Depository Receipts will be calculated based on [either] the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting or a methodology *weighting components of the index based on any, some or all of the following: Sales, cash flow, book value and dividends;*
- (3)(B)(ii)-(iii) No Change.
- (3)(C)-(E) No Change.
- (4)-(7) No Change.
- (j) Index Fund Shares
- (1)-(2) No Change.
- (3)(A) No Change.
- (3)(B) Index Methodology and Calculation
- (i) The index underlying a series of Index Fund Shares will be calculated based on [either] the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting or a

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://www.complanet.com/nasdaq>.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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