

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49601; File No. SR-CBOE-2004-19]

### 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., Relating to a DPM and Market Maker Transaction Fee

April 22, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 29, 2004, the Chicago Board Options Exchange, Inc. ("CBOE") 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 15, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 make a change to its Fee Schedule to establish a \$.40 per contract license fee on all Designated Primary Market Maker ("DPM") and Market Maker transactions in the Russell 2000 (RUT) option class. The text of the proposed rule change, as amended, may be examined at the places specified in Item IV, below.

#### 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 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. 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 CBOE proposes to establish a \$.40 per contract license fee on all DPM and Market Maker transactions in the RUT option class. In January, 2003, the CBOE amended its Fee Schedule to require DPMs to pay period license fees in their appointed option classes.<sup>4</sup> This provision was initially applied to the RUT option class. The CBOE also established a separate \$.16 per contract fee upon all DPM contracts traded in the RUT.<sup>5</sup> The \$.16 per contract fee was eliminated later in 2003.<sup>6</sup>

Recently, the RUT DPM agreed to trade RUT via the CBOE's Hybrid Trading System. In light of RUT's move to Hybrid Trading, the CBOE proposes to recoup the periodic RUT license fee with a \$.40 per contract license fee on RUT transactions by the DPM as well as by the other Market Makers in RUT. The RUT DPM will remain responsible for making up any shortfall between the proceeds the CBOE receives from the new \$.40 per contract license transaction fee and the CBOE's RUT license fee obligations to the Russell company. The CBOE believes that this proposal will maintain an equitable allocation of the RUT license fee obligation in RUT's new Hybrid Trading environment, while maintaining the DPM's obligation, in recognition of its special status as the RUT DPM,<sup>7</sup> to ensure satisfaction of the overall license fee obligation.

##### 2. Statutory Basis

The CBOE believes that the proposal is consistent with section 6(b) of the Act,<sup>8</sup> in general, and section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

<sup>4</sup> See Securities Exchange Act Release No. 47169 (January 13, 2003), 68 FR 2596 (January 17, 2003) (SR-CBOE-2003-73).

<sup>5</sup> See Securities Exchange Act Release No. 47170 (January 13, 2003), 68 FR 2595 (January 17, 2003) (SR-CBOE-2002-72).

<sup>6</sup> See Securities Exchange Act Release No. 48223 (July 24, 2003) (SR-CBOE-2003-26).

<sup>7</sup> Cf. Securities Exchange Act Release Nos. 47169 (January 13, 2003), 68 FR 2596 (January 17, 2003) (SR-CBOE-2002-73); 43226 (August 29, 2000), 65 FR 54332 (September 7, 2000) (SR-CBOE-00-33) (each noting the special status afforded to a DPM in connection with the equitable allocation of license fee obligations).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

The CBOE 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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder because it changes a fee imposed by the CBOE. 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.<sup>12</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 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-2004-19 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-2004-19. This file number should be included on the subject line if e-mail is used. To help the

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> See 15 U.S.C. 78b(3)(C). For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 15, 2004, the date the CBOE filed Amendment No. 1.

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

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

<sup>3</sup> See letter from Christopher Hill, Attorney, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 15, 2004 ("Amendment No. 1"). In Amendment No. 1, the CBOE made a technical correction to the rule text.

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 Section, 450 Fifth Street, NW., Washington, DC 20549. 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-2004-19 and should be submitted on or before May 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49614; File No. SR-CBOE-2004-23]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Amendment No. 1 Thereto To Permanently Approve the Modified ROS Opening Procedure Pilot Program, Which Occurs on the Settlement Date of Futures and Options on Volatility Indexes

April 26, 2004.

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 21, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities Exchange

Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III, below, which Items have been prepared by CBOE. On April 23, 2004, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

CBOE seeks permanent approval of the modified Rapid Opening System ("ROS") opening procedure, which was approved by the Commission on a pilot basis through November 17, 2004.<sup>4</sup> The proposed rule change retains the text of CBOE Rule 6.2A.03 as currently approved on a pilot basis. The text of the proposed rule change is available at the office of the Secretary, CBOE, and at the Commission.

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

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

On March 24, 2004, the Commission approved, on a pilot basis, the implementation of a modified ROS procedure. The modified ROS opening procedure pilot program facilitates the trading of options and futures on volatility indexes intended to be traded on CBOE or on the CBOE Futures Exchange, LLC ("CFE") by modifying certain of the rules that govern ROS for

index option series whose prices are used to derive the volatility indexes on which options and futures will be traded. The modified ROS opening procedure also expanded the types of orders for these index options that may be included in ROS at the time when settlement values for volatility index options and futures are being determined. CBOE believes that the modifications permit a more accurate determination of these settlement values, and assure that these values more closely converge with the prices of the index options from which they are derived. The modified ROS opening procedure pilot program is due to expire on November 17, 2004. CBOE now proposes that the modified ROS opening procedure pilot program be approved on a permanent basis.

CBOE requested approval of the modified ROS opening procedure on a pilot program basis following CBOE's proposal to list and trade options on several volatility indexes; specifically, the CBOE Volatility Index ("VIX"); the CBOE Nasdaq 100 Volatility Index ("VXN"); and the CBOE Dow Jones Industrial Average Volatility Index ("VXD").<sup>5</sup> CBOE states that it may file additional proposed rule changes to provide for the listing of options on other volatility indexes in the future. CFE, which is a designated contract market approved by the Commodity Futures Trading Commission ("CFTC") and a wholly-owned subsidiary of CBOE, filed a rule change with the CFTC to provide for the listing and trading of futures on the VIX on CFE, and may list additional futures products on other volatility indexes in the future. CBOE believes that approval of the modified ROS opening procedure pilot program on a permanent basis will provide certainty as to the settlement process for market participants that trade those futures and options contract months on volatility indexes that expire beyond November 17, 2004.

##### Volatility Index Description

In general, CBOE states that volatility indexes (including, without limitation, the VIX, VXN and VXD (each, a "Volatility Index")) provide investors with up-to-the-minute market estimates of expected near-term volatility of the prices of a broad-based group of stocks by extracting volatilities from real-time index option bid/ask quotes. Volatility Indexes are calculated using real-time

<sup>3</sup> See letter from David Doherty, Attorney, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation, Commission, dated April 23, 2004 ("Amendment No. 1"). In Amendment No. 1, the CBOE deleted its proposed change to the cut-off time for the submission of orders for placement on the electronic book. According to CBOE, the CBOE intends to submit the modification to the cut-off time as a separate proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 49468 (March 24, 2004), 69 FR 17000 (March 31, 2004) (SR-CBOE-2004-11).

<sup>5</sup> See Securities Exchange Act Release Nos. 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003) (Notice of filing of File No. SR-CBOE-2003-40); 49563 (April 14, 2003), 69 FR 21589 (April 21, 2004) (Order approving File No. SR-CBOE-2003-40).

<sup>13</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.