

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49769; File No. SR-CBOE-2004-13)

May 25, 2004

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Retroactive Crediting of Certain DPM Principal Acting as Agent Order Transaction Fees

On March 9, 2004, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) submitted to the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to change its Fee Schedule to retroactively credit Designated Primary Market-Makers (“DPMs”) for transaction fees they incur related to the execution of outbound “principal acting as agent” (“P/A”) Orders,³ as defined in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the “Linkage Plan”). On March 31, 2004, the CBOE submitted Amendment No. 1 to the proposed rule change.⁴ The Federal Register published the proposed rule change, as amended, for comment on April 23, 2004.⁵ The Commission received no

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A “P/A Order” is defined as an order for the principal account of a Market Maker that is authorized to represent Customer orders, reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent. See Section 2(16) of the Linkage Plan.

⁴ See Letter from Chris Hill, Attorney, CBOE, to Nancy Sanow, Assistant Director, Commission, dated March 26, 2004 (“Amendment No. 1”). In Amendment No. 1, the CBOE submitted a new Form 19b-4, which replaced and superceded the original filing in its entirety.

⁵ See Securities Exchange Act Release No. 49575 (April 16, 2004), 69 FR 22110.

comments on the proposed rule change. This order approved the proposed rule change, as amended.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.⁶ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires, among other things, that the rules of the Exchange provide for the equitable allocation of reasonable dues fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the proposed rule change, which would apply retroactively to July 1, 2003 an existing program that rebates transaction and trade match fees that DPMs incur when they trade against a customer order that underlies a P/A Order the DPM sent through the Intermarket Option Linkage (“Linkage”), and that credits the DPMs up to an additional 50% of such transaction and trade match fees (the “50% rebate”),⁸ will offset some of the fees that the DPMs have incurred for submitting P/A Orders through the Linkage since shortly after the full implementation of the Linkage. Moreover, the Commission notes that the proposed rule change clarifies that the DPM is eligible for the 50% rebate only when a DPM that sends a P/A Order incurs additional fees from another Participant for the execution of such a P/A Order, and clarifies that the aggregate amount of the 50% rebate for all DPMs will be limited to no more than the total

⁶ In approving this rule, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

⁸ See Securities Exchange Act Release No. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2004-08).

amount of fees that the Exchange earns from fees generated by inbound Linkage transaction and trade match fees.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-CBOE-2004-13), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).