

The Commission finds good cause for approving this proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.<sup>13</sup> The Commission believes that the proposed rule change is generally consistent with rules in place at other exchanges, and that acceleration of the proposed rule change, as amended, will permit the Exchange to implement the proposal in an expeditious manner and to compete with other exchanges that have similar rules without delay. The Commission, therefore, believes it is consistent with Sections 6(b)(5)<sup>14</sup> and 19(b)(2)<sup>15</sup> of the Act to approve the Amex's proposed rule change on an accelerated basis.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-2005-002), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51260; File No. SR-CBOE-2005-02]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Fees for Reduced-Value Options on the Russell 2000 Index

February 25, 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 January 3, 2005, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the

proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</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 amend its Fee Schedule to establish fees for reduced-value options on the Russell 2000 Index. The text of the proposed rule change is available on CBOE's Web site (<http://www.cboe.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

### 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 statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange has submitted to the Commission a proposal to list for trading options that are based on one-fifth and one-tenth the value of the Russell 2000 Index ("Reduced-Value Options").<sup>5</sup> The Exchange proposes to amend its Fee Schedule to establish fees for the Reduced-Value Options by setting the fees equal to the fees that are currently assessed by the Exchange for options on exchange-traded funds ("ETFs").

Specifically, the Exchange proposes to assess public customers a transaction fee of \$0.15 for transactions in the Reduced-Value Options, which is equivalent to what public customers are assessed for transactions in ETFs and Holding Company Depositary Receipts ("HOLDRS") options.<sup>6</sup> Thus, public

customer transaction fees for the Reduced-Value Options will be lower than the public customer transaction fees for the full-value Russell 2000 Index options ("RUT").<sup>7</sup>

All other fees for the Reduced-Value Options will also be the same as the fees currently assessed for ETF options. Market-maker and DPM transaction fees will be \$0.24 and member firm proprietary transaction fees will be \$0.20 for facilitation of customer orders and \$0.24 for non-facilitation orders. Linkage and broker-dealer transaction fees will be \$0.45 if the premium is greater than or equal to \$1 and \$0.25 if the premium is less than \$1.<sup>8</sup> Non-member market-maker transaction fees will be \$0.47 if the premium is greater than or equal to \$1 and \$0.27 if the premium is less than \$1. The floor brokerage fee will be \$0.04 and \$0.02 for crossed orders.

The RAES Access Fee will not apply as the Reduced-Value Options will trade on the Exchange's Hybrid Trading System. Also, the \$0.40 RUT DPM and Market-Maker License Fee will not apply as that fee is only applicable to DPM and Market-Maker transactions in the full-value Russell 2000 Index (RUT) options. The \$0.22 marketing fee will not apply as that fee is not applied to index option transactions.

The effect of this proposed rule change is to establish public customer transaction fees for the Reduced-Value Options that are lower than the public customer transaction fees for RUT options.<sup>9</sup> The Exchange believes the proposed rule change will further the Exchange's goal of making trading in Russell 2000 index options accessible to a greater range of investors.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in particular, in that it is

Release No. 50469 (September 29, 2004), 69 FR 59628 (October 5, 2004) ("ETF and HOLDRS fee filing").

<sup>7</sup> Public customer transaction fees for RUT options are \$0.45 if the premium is greater than or equal to \$1 and \$0.25 if the premium is less than \$1.

<sup>8</sup> The Exchange is also making a clarifying change to the Fee Schedule to make clear that broker-dealer transaction fees for options on ETFs and HOLDRS are not equal to the customer transaction fees. Only public customers pay a transaction fee of \$0.15 for ETF and HOLDRS options. See ETF and HOLDRS fee filing, *supra* note 6.

<sup>9</sup> Except for public customer transaction fees and the RUT DPM and Market-Maker License Fee, all fees for RUT options are the same as the fees that are applicable to options on ETFs.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</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)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See File No. SR-CBOE-2004-89.

<sup>6</sup> Public customer transaction fees for options on ETFs and HOLDRS were reduced to \$0.15 effective October 1, 2004. See Securities Exchange Act

designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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 Exchange has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup> The Exchange represents that the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change as required by Rule 19b-4(f)(6). The Exchange has requested that the Commission waive the 30-day operative delay period for "non-controversial" proposals and make the proposed rule change effective and operative upon filing.

The Commission has determined to waive the 30-day operative delay period.<sup>14</sup> The effect of the proposal would be to establish public customer transaction fees for the Reduced-Value Options that are lower than the public customer transaction fees for full-value Russell 2000 Index options. For this reason, the Commission sees no reason

to delay the operation of the proposed change. 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.<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 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-2005-02 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-2005-02. 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, 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 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 File Number SR-CBOE-2005-02 and should be submitted on or before March 25, 2005.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51271; File No. SR-CBOE-2004-45]

### **Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 5 by the Chicago Board Options Exchange, Inc. Relating to the Trading of Complex Orders on the CBOE Hybrid System**

February 28, 2005.

#### **I. Introduction**

On July 16, 2004, the Chicago Board Options, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to create a complex order book ("COB") for certain complex orders traded on the CBOE Hybrid System ("Hybrid"). On November 8, 2004, the CBOE filed and withdrew Amendment No. 1 to the proposal and filed Amendment No. 2 to the proposal.<sup>3</sup> The CBOE filed Amendment No. 3 to the proposal on January 31, 2005.<sup>4</sup> The CBOE filed Amendment No. 4 to the proposal on

<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> Amendment No. 2 supersedes and replaces the original filing in its entirety.

<sup>4</sup> Amendment No. 3 revises the proposal to add Interpretation and Policy .01 to CBOE Rule 6.53C. Interpretation and Policy .01 states that conversions and reversals are not eligible for routing to the COB, and that the CBOE will file any changes to Interpretation and Policy .01 with the Commission pursuant to section 19(b)(3)(A) of the Act.

<sup>5</sup> Amendment No. 5 adds Interpretation and Policy .02 to CBOE Rule 6.53C. Interpretation and Policy .02 states that until May 27, 2005, the N-second group timer, as described in CBOE Rule 6.45A(c), for complex order transactions will be set at zero seconds. Effective May 30, 2005, the N-second timer for complex order transactions will be set at the same length for complex order transactions and for transactions that do not involve complex orders.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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