

does not extend to the member unless the person would reasonably expect the member to be included.

Paragraph 429(g)(2) defines the terms "telemarketing" and "telephone solicitation" to mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

The term "personal relationship" is defined in paragraph 429(g)(3) as any family member, friend, or acquaintance of the telemarketer making the call. The term "account activity" as defined in paragraph 429(g)(4) shall include, but not be limited to, purchases, sales interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member. Finally, the term "broker/dealer of record" as defined in paragraph 429(g)(5) refers to the broker/dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Exchange Act<sup>11</sup> in general and furthers the objectives of Section 6(b)(5)<sup>12</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes the proposed rule change will enhance investor protection by enabling persons who do not want to receive telephone solicitations from members or member organizations to receive the protections of the national do-not-call registry.

### *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 not necessary or appropriate in furtherance of the purposes of the Exchange 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 by the Exchange on this proposal.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **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 Exchange 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 [rulecomments@sec.gov](mailto:rulecomments@sec.gov). Please include File Number SR-Amex-2005-064 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 File Number SR-Amex-2005-064. 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 Section, 100 F Street, NE., Washington, DC 20549. 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-2005-064 and should be submitted on or before December 27, 2005.

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

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. E5-6828 Filed 12-2-05; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-52851; File No. SR-CBOE-2005-84]**

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Transaction Fees for Options on the Dow Jones Industrial Average**

November 29, 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 October 11, 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, II and III below, which Items have been prepared by the CBOE. On November 22, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The CBOE

<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.

<sup>3</sup> In Amendment No. 1, the Exchange revised the proposed rule text to amend the fees assessed to non-member market-makers for transactions in options on the Dow Jones Industrial Average ("DJX options") and in "Jumbo" options on the Dow Jones Industrial Average ("DXL options"). The Exchange states that this change in fees assessed to non-member market-makers for transactions in DJX

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</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**

The Exchange proposes to amend its Fees Schedule to: (i) Amend certain fees for DJX options, and (ii) establish fees for DXL options. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room. The text of the proposed rule change is also included below. Proposed new language is *italicized*; proposed deletions are in [brackets].

**CHICAGO BOARD OPTIONS EXCHANGE, INC. FEES SCHEDULE**

[OCTOBER 1, 2005] *NOVEMBER 2, 2005*

- 1. 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 HOLDERS options) (17):

I. CUSTOMER (2):	
• S&P 100, PREMIUM > or = \$1 .....	\$ .35
• S&P 100, PREMIUM < \$1 .....	\$ .20
• <i>DJX</i> , MNX, [and] NDX, <i>RUT and RMN</i> .....	\$ .15
• [RUT and RMN] .....	\$ [15]
• ETF and HOLDERS options .....	\$ .15
• OTHER INDEXES, PREMIUM > OR = \$1 .....	\$ .45
• OTHER INDEXES, PREMIUM < \$1 .....	\$ .25
II. MARKET-MAKER AND DPM (10): [—EXCLUDING DOW JONES PRODUCTS OTHER THAN DIA (10)\$ .24]	
[MARKET-MAKER—DOW JONES PRODUCTS (except DIA) (10) .....	\$ .34]
• <i>DOW JONES PRODUCTS (except DIA and DJX)</i> .....	\$ .34
• <i>OTHER INDEXES</i> .....	\$ .24
III. MEMBER FIRM PROPRIETARY: (11)	
• FACILITATION OF CUSTOMER ORDER, MNX and NDX .....	\$ .24
• FACILITATION OF CUSTOMER ORDER, OTHER INDEXES .....	\$ .20
• NON-FACILITATION ORDER .....	\$ .24
IV. BROKER-DEALER (EXCLUDING THE PRODUCTS BELOW) INDEX CUSTOMER RATES.	
• <i>DJX</i> , ETF (except DIA), HOLDERS, RUT and RMN, PREMIUM > or = \$1 .....	\$ .45
• <i>DJX</i> , ETF (except DIA), HOLDERS, RUT and RMN, PREMIUM < \$1 .....	\$ .25
• DIA, MNX and NDX .....	\$ .25
V. NON-MEMBER MARKET MAKER:	
• DIA and <i>DJX</i> .....	\$ .26
• <i>DXL</i> .....	\$ .36
• S&P 100 (including OEF), PREMIUM > or = \$1 .....	\$ .37
• S&P 100 (including OEF), PREMIUM < \$1 .....	\$ .22
• OTHER INDEXES, PREMIUM > or = \$1 .....	\$ .47
• OTHER INDEXES, PREMIUM < \$1 .....	\$ .27
VI.- IX. Unchanged.	
2. MARKETING FEE (6)(16) .....	\$ .22
3. FLOOR BROKERAGE FEE (1)(5)(16)(17):	
• EQUITY & QQQQ CUSTOMER ORDER .....	\$ .00
• ALL OTHER EQUITY, QQQQ AND INDEX OPTIONS (8) .....	\$ .04
• CROSSED ORDERS .....	\$ .02
4. RAES ACCESS FEE (RETAIL AUTOMATIC EXECUTION SYSTEM) (1)(4)(16):	
• INDEX CUSTOMER TRANSACTIONS .....	\$ .25
• DOW JONES, ASSESSED ON THE FIRST 25 CONTRACTS ONLY	
• NON-CUSTOMER TRANSACTIONS (ORIGIN CODE OTHER THAN "C")(8)(9) .....	\$ .30

FOOTNOTES: Unchanged.

5.-6. Unchanged.

7. INDEXES CUSTOMER ORDER BOOK OFFICIAL (OBO) EXECUTION FEES(16)(17):

	Rate Per Contract (1)
Accommodation Liquidation Or Cabinet Order .....	\$ .10
All Other Orders .....	.25

(1) OEX—No charge for “market” and “limit orders” placed with the OBO

prior to the opening and executed during opening rotation.

Other Indexes—Same as above for index “market orders” (“limit orders” not included).

options and DXL options will be implemented on December 1, 2005.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> The effective date of the original proposed rule change is October 11, 2005, and the effective date of Amendment No. 1 is November 22, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the

proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 22, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Remainder of Fees 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 Exchange 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 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 Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend its Fees Schedule to reduce and eliminate certain fees for DJX options and to establish fees for DXL options.

a. *DJX Options Fees.* The Exchange proposes to reduce customer and non-member market-maker fees for transactions in DJX options and eliminate the market-maker license fee surcharge applicable to transactions in DJX options.

Currently, customer transaction fees for transactions in DJX options are \$.45 if the premium is greater than or equal to \$1 and \$.25 if the premium is less than \$1. The Exchange proposes to reduce fees for public customer transactions in DJX options to \$.15 per contract. Moreover, the transaction fees for non-member market-maker transactions in DJX options are currently \$.47 per contract if the premium is greater than or equal to \$1 and \$.27 per contract if the premium is less than \$1. The Exchange proposes to reduce the non-member market maker transaction fee for transactions in DJX options to \$.26 per contract, regardless of the premium.<sup>7</sup>

In addition, the Exchange currently charges market-makers that trade Dow Jones products, except options on DIAMONDS ("DIA"), a license fee of \$.10 per contract in addition to the regular transaction fee of \$.24 per contract, to assist the Exchange in offsetting some of the royalty fees the Exchange must pay to Dow Jones for its

<sup>7</sup> See Amendment No. 1, *supra* note 3. According to CBOE, the proposed change to the fees assessed to non-member market-makers for transactions in DJX options will be implemented on December 1, 2005.

license to trade Dow Jones products.<sup>8</sup> The Exchange proposes to eliminate the \$.10 license fee with respect to market-maker transactions in DJX options.<sup>9</sup>

The Exchange is reducing these fees in connection with DJX options moving to CBOE's Hybrid Trading System.<sup>10</sup> The proposed fees changes are intended to make DJX options competitively priced with respect to DIA options.

b. *DXL Options.* The Exchange launched trading in DXL options on October 11, 2005.<sup>11</sup> DXL options are options that are based on one-tenth the value of the Dow Jones Industrial Average ("DJIA").<sup>12</sup> DXL options will trade in open outcry. The Exchange proposes to amend its Fees Schedule to establish fees for DXL options.

Specifically, the Exchange proposes to assess public customers a transaction fee for DXL options of \$.45 if the premium is greater than or equal to \$1 and \$.25 if the premium is less than \$1. Market-maker transaction fees for DXL options will be \$.34, which consists of the standard \$.24 transaction fee and the \$.10 license fee surcharge assessed on certain Dow Jones index options as described above. Non-member market-maker transaction fees for DXL options will be \$.36, regardless of the premium.<sup>13</sup>

Member firm proprietary transaction fees for DXL options will be \$.20 for facilitation of customer orders and \$.24 for non-facilitation orders. Broker-dealer transaction fees for DXL options will be \$.45 if the premium is greater than or equal to \$1 and \$.25 if the premium is less than \$1.

The floor brokerage fee for DXL options will be \$.04, and for crossed

<sup>8</sup> See Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978, 44979 (July 31, 2003).

<sup>9</sup> The Commission notes that the Exchange currently charges market-makers that trade Dow Jones products, except DIA options, a total fee of \$.34 per contract, which reflects a \$.10 licensing fee surcharge. Under the proposed rule change, the fee for market-makers that trade DJX options will be \$.24 per contract.

<sup>10</sup> Conversation between Jaime Galvan, Assistant Secretary, CBOE and Sara Gillis, Attorney, Division of Market Regulation, Commission on November 23, 2005.

<sup>11</sup> *Id.*

<sup>12</sup> DXL options are referred to as "Jumbo-DJX" options because they are ten times larger than DJX options (DJX options are based on 1/100th the value of the DJIA).

<sup>13</sup> See Amendment No. 1, *supra* note 3. CBOE had originally proposed to charge non-member market-makers a transaction fee for transactions in DXL options of \$.47 per contract if the premium was greater than or equal to \$1 and \$.27 per contract if the premium was less than \$1. In Amendment No. 1, CBOE proposed to change the non-member market-maker transaction fees for DXL options to \$.36 per contract, regardless of the premium. According to CBOE, the proposed change to the fees assessed to non-member market-makers for transactions in DXL options will be implemented on December 1, 2005.

orders, the floor brokerage fee will be \$.02. The RAES Access Fee will be \$.25 for customer transactions (only the first 25 contracts will be assessed) and \$.30 for non-customer transactions. Order Book Official ("OBO") execution fees will be \$.10 per contract for cabinet and accommodation/liquidation trades and \$.25 per contract for all other orders.

#### 2. Statutory Basis

The CBOE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>15</sup> in particular, in that it is 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

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

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>16</sup> and Rule 19b-4(f)(2)<sup>17</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.<sup>18</sup> At any time within 60 days of the filing of the proposed rule change, as amended, 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>19</sup>

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

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>18</sup> See *supra* note 6.

<sup>19</sup> *Id.*

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-84 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 File Number SR-CBOE-2005-84. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 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-2005-84 and should be submitted on or before December 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-6831 Filed 12-2-05; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52852; File No. SR-DTC-2005-18]

#### **Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Scope of Risk Management Controls as They Relate to Maturity Presentment Transactions of Pledged Money Market Instruments**

November 29, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 28, 2005, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on November 16, 2005, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to clarify the scope of DTC's use of risk management controls as they relate to maturity presentment ("MP") transactions of pledged Money Market Instruments ("MMIs").

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by DTC.

#### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change clarifies the scope of DTC's use of risk management controls as they relate to MP transactions of pledged MMIs.<sup>3</sup> Specifically, pledged MP transactions shall be processed in the same manner as non-pledged MP transactions<sup>4</sup> and therefore subject to DTC's collateral monitor and net debit cap controls.<sup>5</sup> As is the case for unpledged MPs, pledged MPs shall only be processed if they will not cause the IPA's collateral monitor or net debit cap to become negative.

Other pledged MPs shall recycle in a "pend" queue until additional collateral or liquidity for the IPA is infused later in the day, which may come from payments sent to DTC by the IPA or from credits resulting from the issuance of new commercial paper.

The proposed rule change is consistent with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder applicable to DTC because it assures the safeguarding of securities and funds which are in the custody or control of DTC because pledged MP transactions will be processed in the same manner as non-pledged MP transactions and therefore

<sup>3</sup> For background information regarding DTC's MMI program, see Securities Exchange Act Release Nos. 49618 (April 26, 2004), 69 FR 23840 [File No. SR-DTC-2003-12]; 48145 (July 9, 2003), 68 FR 42442 [File No. SR-DTC-2003-03]; 39422 (December 17, 1997), 62 FR 66158 [File No. SR-DTC-97-20]; 36811 (February 5, 1996), 61 FR 5433 [File No. SR-DTC-95-15]; 35655 (April 28, 1995), 60 FR 22423 [File No. SR-DTC-95-05]; 33958 (April 22, 1994), 59 FR 22878 [File No. SR-DTC-93-12]; and 28424 (September 11, 1990), 55 FR 38428 [File No. SR-DTC-90-08].

<sup>4</sup> MMI maturity processing is initiated automatically each morning by DTC, which electronically sweeps all maturing positions of MMI CUSIPs from investors' custodian accounts and generates the appropriate MPs. The MMI is then delivered to the account of the appropriate issuing/paying agent ("IPA"). DTC debits the IPA's account in the amount of the maturity proceeds for settlement that day. DTC credits the same amount of the maturity proceeds to the investor's custodian account for payment that day to the investor. Processing of a pledged maturing MMI uses a DTC internal account and generates deliver orders from the internal account to the pledgor upon the processing of the release. However, in the event of a market disruption, pledged MMIs will be automatically swept and processed and will not be included in the maturity presentment contingency system (MPCS) processing as are non-pledged MMIs, which can be selectively released for processing in a market disruption using MPCS.

<sup>5</sup> Dealers or custodian banks may pledge MMI positions to a pledgee bank. When the applicable MMI matures, MP transactions are staged to DTC's Account Transaction Processor to deliver the pledged position from an internal DTC account to the IPA in exchange for the total maturity payment of the pledged position.

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>20</sup> 17 CFR 200.30-3(a)(12).