

but not all, of the per contract license fees that the Exchange pays in order to receive permission to trade the RUT at the CBOE. The DPM has indicated its willingness to pay this fee. In addition, the Exchange represents that the total amounts collected through this per contract fee shall not exceed the total per contract license fees paid to Russell. Finally, the Exchange believes that this proposed rule change is substantially identical to a previous CBOE rule filing, SR-CBOE-00-33, which the Exchange filed with the Commission on July 31, 2000.⁴

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act⁵ in general and furthers the objectives of section 6(b)(4) of the Act⁶ 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

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (f) of rule 19b-4 thereunder. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR-CBOE-2002-72 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47169; File No. SR-CBOE-2002-73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Pass-Through of Periodic License or Royalty Fees

January 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 the Exchange under Section 19(b)(3)(A)(ii) of the Act,³

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

The Exchange proposes to make a change to its fee schedule related to the pass-through of periodic license or royalty fees for DPM-traded products. 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, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. 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

In connection with the trading of certain option classes and other securities on the Exchange, the Exchange is beginning to be confronted with a new cost, namely, a requirement to pay a periodic (*e.g.*, annual) license or royalty fees to third parties as a condition to listing and trading certain securities. These periodic license or royalty fees may be imposed on the Exchange in addition to any per contract license or royalty fees, and they differ from such per contract fees in that the required cost to the Exchange is fixed and does not vary based upon the trading volume in the applicable security. One example is the fee for listing and trading the Russell 2000®, which is an annual fee payable on a quarterly basis.⁴ It is therefore not workable for the Exchange to assess per contract fees on variable trading volume in the products in order to recoup such fixed periodic costs.

⁴ Telephone conversation between Chris Hill, Attorney II, CBOE, and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Ian Patel, Attorney, Division of Market Regulation, Commission (January 9, 2003).

⁴ Securities Exchange Act Release No. 43226 (August 29, 2000), 65 FR 54332 (September 7, 2000).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

The Exchange therefore proposes to establish a policy whereby it will pass any periodic license or royalty fees through the DPM allocated to a security for which the Exchange pays such fees. This policy, which would be memorialized in the Exchange fee schedule under "Miscellaneous Fees," would apply to any securities traded on the Exchange, whether a listed security or a security traded pursuant to unlisted trading privileges, that are allocated to a DPM and for which the Exchange pays a periodic license or royalty fee to authorize trading at the Exchange, including options, structured products, exchange-traded funds ("ETFs") based on a stock index,⁵ and Trust Issued Receipts ("TIRs") (as described in Interpretation .04 to CBOE Rule 1.1). At the present time, the Exchange does not foresee any periodic license or royalty fees being imposed upon products that are not allocated to a DPM. If and when that occurs, however, the Exchange would address it by submitting to the Commission a separate proposed rule change that, like this one, would treat all such similarly situated products in the same manner.

The Exchange represents that any fee passed through to the DPM pursuant to this filing will reflect only the actual costs incurred by the Exchange for a periodic license or royalty fee in connection with Exchange trading of the security allocated to the DPM, and which are not otherwise offset by any other fees imposed by the Exchange. The Exchange also represents that it will inform any applicants for the DPM position in such products that they will have the periodic license or royalty fee passed through to them if they are awarded the DPM position for that product, and that this periodic pass through may be separate from any additional per contract license or royalty fee that may also be charged to the DPM and/or other market participants in connection with the trading of such product.

The Exchange believes this fee is reasonable and justified because DPMs for products with a periodic license or royalty fee have been awarded special status for the product (*i.e.* the DPM status) and thus, stand to gain the most from continued CBOE listing of the product, which will be dependent upon the payment of the periodic license or royalty fee. It also is more logistically workable to pass a periodic fee through to the single DPM entity, which

⁵ For ease of reference, this rule filing uses the term ETF to describe both Index Portfolio Receipts ("IPRs"), as described in Interpretation .02 to CBOE Rule 1.1, and Index Portfolio Shares ("IPs") as described in Interpretation .03 to CBOE Rule 1.1.

consistently participates in a substantial percentage of the trading in such products, rather than attempting to identify and assess all the other market participants in such trading, which can vary in identity and the extent of their participation in such trading over time.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁶ in general and furthers the objectives of Section 6(b)(4) of the Act⁷ 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

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f) of Rule 19b-4 thereunder. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

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 will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR-CBOE-2002-73 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-1108 Filed 1-16-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47163; File No. SR-CHX-2002-39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice hereby is given that on December 30, 2002, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the CHX has prepared. 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 CHX proposes to amend its membership dues and fees schedule effective through December 31, 2003, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria, described below. The text of the proposed rule change is available at the CHX and at the Commission.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.