

should be submitted on or before January 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Jonathan G. Katz,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53044; File No. SR-CBOE-2005-114]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Extension of the Prospective Fee Reduction and DPM Linkage Fee Credit Programs

December 30, 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 December 16, 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 Exchange. On December 22, 2005, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) 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. 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 proposes to amend its Fees Schedule to extend through January 31, 2006 the Prospective Fee Reduction Program and the DPM Linkage Fees Credit Program. The text of the

proposed rule change is available on CBOE's Web site, <http://www.cboe.com>, at CBOE'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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to extend two Exchange-fee related programs through the end of January 2006: The Prospective Fee Reduction Program and the DPM Linkage Fees Credit Program.<sup>6</sup> Each program is currently due to expire at the end of 2005. The Exchange has determined to extend each of these programs for an additional month because the Exchange's 2006 budget is expected to be approved in January 2006.

**Prospective Fee Reduction Program.** The Exchange proposes to continue the Prospective Fee Reduction Program ("PFRP") through January 31, 2006. No other changes to the PFRP are proposed. The current PFRP took effect on August 1, 2004.<sup>7</sup> The PFRP is intended to reduce Market-Maker and DPM transaction fees in periods of high volume. The Exchange will determine as part of its annual budget review process whether the PFRP should be continued, modified or eliminated in the future. Any proposed changes to the PFRP would be filed with the Commission.

**DPM Linkage Fees Credit Program.** The Exchange proposes to continue the DPM Linkage Fees Credit Program ("Linkage Fees Credit") through January 31, 2006. No other changes to the Linkage Fees Credit are proposed. The Linkage Fees Credit took effect on

February 2, 2004 and was amended twice.<sup>8</sup> The Linkage Fees Credit is a program that credits DPMs for transaction fees they incur related to the execution of outbound P/A orders, as defined in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage, to assist DPMs in offsetting the additional costs they incur in routing orders to other exchanges in order to obtain the National Best Bid or Offer. The Exchange will determine as part of its annual budget review process whether the Linkage Fees Credit should be continued, modified or eliminated in the future. Any proposed changes to the Linkage Fees Credit would be filed with the Commission.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

CBOE believes that the proposed rule change would impose no 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

CBOE did not solicit or receive any written comments with respect to the proposal.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder. Accordingly, the proposal is effective upon filing with the Commission. 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

<sup>6</sup> See Securities Exchange Act Release Nos. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004) (SR-CBOE-2004-08); 49769 (May 25, 2004), 69 FR 31145 (June 2, 2004) (SR-CBOE-2004-13); and 52660 (October 24, 2005), 70 FR 62355 (October 31, 2005) (SR-CBOE-2005-80).

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</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, CBOE deleted all references to an extension of the Fixed Annual Fee Program.

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

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

<sup>6</sup> See Sections 19 and 21 of the CBOE Fees Schedule, respectively.

<sup>7</sup> See Securities Exchange Act Release No. 50175 (August 10, 2004), 69 FR 51129 (August 17, 2004) (SR-CBOE-2004-38). See also Securities Exchange Act Release No. 52111 (July 22, 2005), 70 FR 43729 (July 28, 2005) (SR-CBOE-2005-52) (extension of PFRP through the end of 2005).

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</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, 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-2005-114 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549-9303.
- All submissions should refer to File Number SR-CBOE-2005-114. 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. 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-2005-114 and should be submitted on or before January 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53045; File No. SR-PCX-2005-132]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Obligations of Lead Market Makers

December 30, 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 December 30, 2005, the Pacific Exchange, Inc. ("Exchange" or "PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which rendered 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 delete PCX Rule 6.82(c)(15) in its entirety. The Exchange also proposes to amend Commentary .02 to PCX Rule 6.82. The text of the proposed rule change is available on PCX's Web site, <http://www.pacificex.com>, at PCX's Office of the Secretary, and at the Commission's Public Reference Section.

#### 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 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 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 purpose of this filing is to delete PCX Rule 6.82(c)(15), a sub-paragraph of Obligations of Lead Market Makers. Along with the deletion of PCX Rule 6.82(c)(15), the PCX proposes to amend Commentary .02 to PCX Rule 6.82, which addresses PCX Rule 6.82(c)(15). This rule, dealing with the handling of public customer orders that are not automatically executed on the PCX because there is a better-displayed bid or offer on another exchange, is scheduled to be operative on January 1, 2006.

Under PCX Rule 6.82(c)(15), when a public customer order is not automatically executed on the PCX due to a better bid or ask price being displayed on another exchange, a Lead Market Maker ("LMM") is obligated, as soon as practical, to address the order by either executing the public customer order at a price that matches the best available price displayed at any other exchange or by routing the public customer order via intermarket linkage ("Linkage") for execution at any other exchange displaying the best price in the market at the time. Outbound Linkage orders on the PCX are still handled via manual interaction with the Linkage system. Manual interaction with the Linkage system can be a time consuming process that potentially could result in the delay of a public customer order being executed at a better price available at a competing exchange. By deleting PCX Rule 6.82(c)(15), in the event that an LMM does not execute the order at the better price displayed on another exchange, the LMM would not be required to send the order to the competing exchange via Linkage. Public customer orders that are not executed on the PCX could still be

<sup>13</sup> The effective date of the original proposed rule change is December 16, 2005, and the effective date of Amendment No. 1 is December 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 December 22, 2005, the date on which CBOE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).