

a. Maintaining CBOE Market Share At or Above 25%

DPMs and market makers in the pilot MIP classes who maintain a CBOE market share of 25% in those classes in a particular month will receive a transaction fee refund of \$0.01 per contract for their transactions in those classes during that month. The refund per contract will increase by \$0.01 for each 1% increase in CBOE market share above 25%, up to a maximum of a \$0.16 per contract refund for a 40% CBOE market share, as set forth in the following table:

TABLE I.—PER CONTRACT CREDIT FOR MAINTAINING 25% OR BETTER CBOE MARKET SHARE

Market share (percent)	Credit per MM contract
25.0	\$0.01
26.0	0.02
27.0	0.03
28.0	0.04
29.0	0.05
30.0	0.06
31.0	0.07
32.0	0.08
33.0	0.09
34.0	0.10
35.0	0.11
36.0	0.12
37.0	0.13
38.0	0.14
39.0	0.15
40.0	0.16

b. Increasing CBOE Market Share

Additionally, where the DPM and market makers in a pilot MIP class succeed in increasing the CBOE monthly market share in that class by 1% over the prior six-month rolling average CBOE market share for the class, the DPM and market-makers will receive a \$0.01 per contract refund in their transaction fees in that class for that month. The refund per contract will increase by \$0.01 for each additional 1% increase in CBOE market share over the prior six-month rolling average up to a maximum of a \$0.08 per contract refund for an 8% increase in CBOE market share, as set forth in the following table:

TABLE II.—PER CONTRACT CREDIT FOR INCREASING MARKET SHARE

Market share increase (percent)	Credit per MM contract
1.0	\$0.01
2.0	0.02
3.0	0.03
4.0	0.04
5.0	0.05
6.0	0.06

TABLE II.—PER CONTRACT CREDIT FOR INCREASING MARKET SHARE—Continued

Market share increase (percent)	Credit per MM contract
7.0	0.07
8.0	0.08

c. General Provisions

As is customary with the CBOE's billing practices, MIP refunds will be provided after the close of a given month. At the end of each month, CBOE will calculate the market share of each option class and then send a credit through to each clearing firm, which will then credit individual market maker and DPM accounts. All market makers and DPMs will be provided with reports showing the total credit they received along with details supporting CBOE's calculations. In no case will the monthly aggregate fee refunds under the MIP program in any option class exceed \$0.24 per contract, which is the current total of transaction and trade match fees currently paid by DPMs and market-makers.

The MIP will be funded by discontinuing the existing Prospective Fee Reduction Program ⁴ ("Program") for all equity as well as the QQQ option classes during the same time period that the MIP is in effect.⁵ The current Prospective Fee Reduction Program will remain in effect for all option classes other than the equity and the QQQ option classes.

According to the CBOE, the objective of the MIP program is similar to those of so-called "shortfall fee" programs ⁶ that became effective upon filing and were published by the Commission for several other options exchanges.⁷

⁴ For the current CBOE fiscal year, the Program provides that if at the end of the second or third quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-to-date basis exceeds one of certain predetermined volume thresholds, the Exchange's market-maker transaction fees will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. The temporary discontinuation of the Program has taken effect as part of this proposed rule change. Telephone conversation between Christopher Hill, Attorney, CBOE, and Cyndi Rodriguez, Special Counsel, Division of Market Regulation ("Division"), Commission, on March 13, 2003.

⁵ The Commission notes that the temporary discontinuation of the Program for the pilot MIP classes has taken effect as part of this proposed rule change.

⁶ The CBOE believes that the goal of such "shortfall fee" programs is to encourage trading volume on the exchange. Telephone conversation among Christopher Hill, Attorney, CBOE and Cyndi Rodriguez, Special Counsel, Division, and Tim Fox, Attorney, Division, Commission, on March 6, 2003.

⁷ See Securities Exchange Act Release No. 45351 (January 29, 2002), 67 FR 5631 (February 6, 2002)

However, the CBOE believes that unlike "shortfall fee" programs, which penalize members when they fall below established market share expectations, the CBOE will use the MIP to provide positive incentives for members to increase their market share by continually maintaining highly competitive quotes.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act ⁸ in general, and furthers the objectives of section 6(b)(4) of the Act ⁹ 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 believes that the proposed rule change will impose no burden on competition 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 in response to the proposed rule change.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act ¹⁰ and rule 19b-4(f)(2)¹¹ thereunder because it establishes or changes a due, fee, or other charge imposed by the CBOE. 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 proposed rule change is consistent with the Act. Persons making written submissions

(SR-PCX-2001-51); Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-PHLX-00-07).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).