

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.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of section 6(b)(4) of the Act<sup>6</sup> 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.<sup>7</sup>

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

[FR Doc. 03-1107 Filed 1-16-03; 8:45 am]

**BILLING CODE 8010-01-P**

## 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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,<sup>3</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 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.<sup>4</sup> 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.

<sup>4</sup> 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).

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

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</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)(ii).