



Information Circular IC 04-148

Date: September 30, 2004

To: Members and Member Organizations

From: Equity Market Performance Committee

Re: Proposed Marketing Fee Program

CBOE has determined to replace its current marketing fee program that is assessed on DPM, e-DPM and Market Maker transactions in all equity option classes. The purpose of the new marketing fee plan is to provide the members of the Exchange with the ability to compete for the opportunity to trade with those orders that may otherwise be routed to other exchanges.

The marketing fee will be assessed whereby DPMs, e-DPMs and MMs will be debited \$0.22 for every contract they enter into on the Exchange other than Market-Maker to Market-Maker transactions (including DPMs and e-DPMs). Rebates on fees collected on Market-Maker to Market-Maker will be reflected on the member's monthly statement. In addition, the Marketing Fee Oversight Committee will conduct a quarterly review to determine the effectiveness of the marketing fee and may recommend to the Exchange that it modify the fee in the future based upon its effectiveness.

**The Board of Directors has scheduled a special meeting of the membership to be held on October 28, 2004, for the purpose of holding a membership vote on the proposed program. The Exchange plans to file a rule change with the Securities and Exchange Commission regarding this revised marketing plan to become effective on November 1, 2004. This marketing plan will be implemented as a one year pilot.**

Under this amended program, Exchange members will have the ability to access a profile of each payment accepting firm's order flow, for each crowd to which the member is appointed, sorted by trading crowd. This profile will include average daily volume, average order size and the percentage of market and marketable limit orders comprising each payment accepting firm's order flow. Each member will also have the ability to view a report of his/her interaction with the order flow from the payment accepting firms. This data will be accessible on a daily basis through the member's website.

e-DPMs and MMs may meet on a regular basis with the DPM at their station to provide their views on the value of payment accepting firms' order flow. The DPM will be solely responsible for negotiating the payment for order flow arrangements for the option classes assigned to them.

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All funds generated by the marketing fee will be collected by the Exchange and recorded according to the DPM, station and class where the options subject to the fee are traded. The money collected will be dispersed by the Exchange according to the instructions of the DPM. Those funds will be available to the DPM solely for those crowds where the fee was assessed and may only be used by that DPM to attract orders in the classes of options for which the fee was assessed. Funds collected from e-DPMs will only be used to attract order flow for the classes where the e-DPM is appointed. The Exchange will not be involved in the determination of the terms governing the orders that qualify for payment or the amount of any payment.

The Exchange will provide administrative support for the program in such matters as maintaining the funds, keeping track of the number of qualified orders each firm directs to the Exchange, and making the necessary debits and credits to the accounts of the traders and the payment accepting firms to reflect the payments that are made. Each payment accepting firm will receive one check from the Exchange and the Exchange will provide the payment detail by class and DPM.

Fees collected during a calendar month shall only be available to the DPM for payment for that calendar month's order flow. Any surplus of the marketing fees at the end of each month would be carried forward to the following month. The Marketing Fee Oversight Committee shall review on a quarterly basis any surplus. The Exchange would then refund such surplus, if any, on a pro rata basis based upon contributions made by the Market-Makers.

Questions concerning the marketing fee program may be directed to any member of the Market Performance Committee or to Daniel Hustad at 312-786-7715.