



Date: August 9, 2004 Regulatory Circular #04-87

To: Members and Member Firms

From: Marketing Fee Oversight Committee

Re: Payment for Order Flow Program

The Marketing Fee Oversight Committee would like to re-issue this circular (previously issued as Regulatory circular RG03-72 August 29, 2003) to incorporate e-DPMs into the marketing fee voting procedures. Please be advised that the marketing fee will be in effect in all option classes commencing August 3, 2004, including in those option classes in which trading crowds previously voted not to participate in the marketing fee.

As a reminder, the primary elements of the program are as follows:

- DPMs are solely responsible for negotiating with firms any payment for order flow arrangements for the option classes assigned to them.
- DPMs, e-DPMs and Market Makers will be assessed \$.40 marketing fee per contract (or less if the DPM negotiated a lower rate with a payment accepting firm) only when they trade against eligible orders received from payment-accepting firms.
- The \$.40 marketing fee is applied only to customer orders of 200 contracts or less originating from payment-accepting firms.
- If a DPM has negotiated a payment to a firm in excess of \$.40 per contract, any cost beyond \$.40 per contract is the financial responsibility of the DPM.
- The number of contracts that a market-maker, e-DPM and DPM has traded with payment accepting firms is available on a trade-date-plus-one basis (next day) and can be viewed on the CBOE website by following these steps:

Go to <http://www.cboe.com/TradTool/OutTradeReports.asp>

Click on "Click [Here](#) to sign in."

This will take you to Mobius Document Direct screen and click on the pointed finger.

On the next screen click on the icon next to the CBOE-Reports.

You will be then prompted for a Recipient ID and password.

After entering in this information, you should be able to view your reports.

- The marketing fee is electronically drafted by the clearing firms from the appropriate DPM , e-DPM and/or Market Maker's account and credited to the account of the appropriate order-sending firm.

Voting Procedures

- i. All eligible market participants are free to call for a vote pursuant to the marketing fee voting procedures, as set forth in Interpretation .12 to Rule 8.7
- ii. Members of a trading crowd eligible to participate in the vote will include the DPM and those Market Makers who have transacted at least 80% of their market maker contracts and transactions in-person in each of the three immediately preceding calendar months in option classes traded in the trading crowd, and who continue to be members of the trading crowd in the capacity of a Market Maker at the time of the vote.
- iii. Due to the method by which classes were allocated to e-DPMs and their distribution among various trading crowds, e-DPMs will only be allowed to vote on a class-by-class basis in those option classes that they have been appointed and are quoting in the capacity of an e-DPM.
- iv. Members of a crowd who are absent at the time of the vote may vote by written and signed proxy. Eligible Market Makers have one vote. The DPM organization operating in that crowd will have only one vote, regardless of the number of DPM designees in the crowd.
- v. A trading crowd will be deemed to have indicated that it will cease to participate in the payment program if a majority of the eligible members of the trading crowd participate in the vote and if a majority of the total votes cast is in favor of terminating the program. If a crowd determines to cease participation the marketing fee will cease to be collected on the last business day of the month in which the vote was taken. If a crowd determines to cease participation, another vote may not be called for 30 calendar days.
- vi. A trading crowd will be deemed to have indicated that it will reinstate a program that has been discontinued if a majority of eligible members participate in the vote and if a majority of the total votes cast is in favor of reinstating the program. If a crowd determines to reinstate participation, the marketing fee deduction will begin on the first business day of the month following the vote. If a crowd determines to reinstate participation, another vote may not be called for three calendar months.
- vii. In the event of a tie vote, no change will occur (i.e. if the plan is in place, it will remain in place, and if the plan has been discontinued, it will remain discontinued).
- viii. The Exchange will post a notice at the trading station at least 10 calendar days prior to the time of the vote and ballots will be written form.
- ix. DPMs must disclose the identity of the firms with which they have negotiated a payment schedule. This list of firms must be presented to the crowd seven calendar days prior to the vote and the list will also be printed on the ballot used during the crowd voting procedure. Members who vote by proxy will not be provided a list of the firms that are being paid.
- x. The identity of any and all members requesting to schedule a vote will be held anonymous with the Secretary of the Exchange who is responsible for determining if such member(s) is/are eligible to request a vote in a certain crowd.

A six person Oversight Committee will determine all administrative procedures pertaining to the program in accordance with the rules. The members of that Committee are Anthony Arciero x10491, Brian Cappelletto x10692, John Colletti x10281, John Kinahan x10411, Craig Luce x10291 and Greg Tilly x10341.

Any questions concerning the operation of the program or requests for copies of the rules regarding the program should be directed to Daniel Hustad at 312-786-7715 or any member of the Marketing Fee Oversight Committee.