

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Amex-2005-007), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51459; File No. SR-CBOE-2005-27]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Hybrid Opening System

March 31, 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 March 24, 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 CBOE. 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 proposed rule change would amend the Hybrid Opening System ("HOSS") procedures and the rule relating to the obligations of electronic designated primary market makers ("e-DPMs"). The text of the proposed rule change is available on the CBOE's Web site (<http://www.cboe.com>), at the CBOE's Office of the Secretary, 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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

The Exchange is proposing to amend its rules relating to HOSS procedures and the rules relating to e-DPMs to require all e-DPMs to submit opening quotes during the HOSS opening rotation for every series in each Hybrid class to which any e-DPM is allocated. Currently, CBOE rules only require DPMs to submit opening quotes in option classes listed and traded on the Exchange. The Exchange believes that requiring e-DPMs to submit opening quotes along with DPMs would enhance the opening process for Hybrid option classes by providing greater liquidity during opening rotations, which would in turn lessen the possibility that a Hybrid option class might be unable to open.

To illustrate, under current CBOE rules, only a DPM is required to submit opening quotes in a series<sup>3</sup> and, if the DPM's quoted size at the open is below the total size of the market orders on the other side of the market and no other quotes are on the open, there is a market order imbalance and, under CBOE rules, HOSS will not open that series.<sup>4</sup> If all e-DPMs are now required to add size to the opening quote for each series in the option classes allocated to e-DPMs, the incidence of market order imbalances is likely to decrease.

As such, HOSS rules<sup>5</sup> and the rules relating to e-DPM and DPM obligations, respectively,<sup>6</sup> will be amended to require both e-DPMs and DPMs to enter opening quotes in accordance with HOSS rules in 100% of the series of each class allocated to that DPM or e-DPM.<sup>7</sup>

<sup>3</sup> See Rule 6.2B(a).

<sup>4</sup> See Rule 6.2B(e)(iii).

<sup>5</sup> Rule 6.2B.

<sup>6</sup> DPM obligations are provided under Rule 8.85(a) and e-DPM obligations are provided under Rule 8.93.

<sup>7</sup> Under current CBOE rules, DPMs already are required to submit opening quotes in all of its allocated classes, but this rule filing proposes to adopt rule language that will apply uniformly to both DPMs and e-DPMs.

##### 2. Statutory Basis

By enhancing HOSS opening procedures and making an e-DPM's HOSS obligations consistent with those of a DPM's, the Exchange believes that this proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and further the objectives of Section 6(b)(5)<sup>9</sup> in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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

This proposed rule change does not 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### 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. 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-2005-27 on the subject line.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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.

## Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2005-27. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-2005-27 and should be submitted on or before April 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51463; File No. SR-CBOE-2005-19]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change and Amendment No. 1 Thereto Relating to an Interpretation of Paragraph (b) of Article Fifth of Its Certificate of Incorporation and an Amendment to Rule 3.16(b)**

March 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 7, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "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 CBOE. On March 28, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>2</sup> 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**

The proposed rule change consists of an interpretation of paragraph (b) of Article Fifth of the Certificate of Incorporation of the CBOE pertaining to the right of the 1,402 Full Members of the Board of Trade of the City of Chicago, Inc. ("CBOT") to become members of CBOE without having to purchase a CBOE membership (paragraph (b) of Article Fifth of CBOE's Certificate of Incorporation is referred to as "Article Fifth(b)," and the right of CBOT Full Members to become members of CBOE as described therein is referred to as the "Exercise Right"). This interpretation of the Exercise Right

is embodied in an Agreement dated August 7, 2001, ("2001 Agreement") between CBOE and the CBOT as modified by a Letter Agreement among CBOE, CBOT Holdings, Inc. ("CBOT Holdings") and CBOT dated October 7, 2004 (the "October 2004 Letter Agreement"), and it is reflected in a related amendment to CBOE Rule 3.16.

The 2001 Agreement as modified by the October 2004 Letter Agreement represents the agreement of the parties concerning the nature and scope of the Exercise Right following the consummation of a proposed restructuring of CBOT and in light of the expansion of the CBOT's electronic trading system. The 2001 Agreement as modified incorporates CBOE's interpretation concerning the operation of Article Fifth(b) in light of these changed circumstances at CBOT. That interpretation, together with a proposed amendment to Rule 3.16, constitutes the proposed rule change that is the subject of this filing.

In a Letter Agreement among CBOE, CBOT Holdings and CBOT dated February 14, 2005 (the "February 2005 Letter Agreement"), the parties confirmed that the proposed restructuring of the CBOT as described in Amendment 13 to the registration statement filed by CBOT Holdings and CBOT on Form S-4 under the Securities Act of 1933 as amended at that time, which was the last substantive amendment to the registration statement before it was declared effective by the Commission on that date, constitutes the CBOT restructuring for purposes of the 2001 Agreement and CBOE's interpretation of Article Fifth(b) embodied therein. The 2001 Agreement as modified and clarified by the October 2004 Letter Agreement and the February 2005 Letter Agreement is referred to herein as the "2001 Agreement as amended." The text of the 2001 Agreement is attached as Exhibit 3a to the CBOE's Form 19b-4, the text of the October 7, 2004 Letter Agreement is attached as Exhibit 3b to the CBOE's Form 19b-4, the text of the February 14, 2005 Letter Agreement is attached as Exhibit 3c to the CBOE's Form 19b-4, and the opinion letter of CBOE's special Delaware counsel is attached as Exhibit 3d to the CBOE's Form 19b-4. The text of the proposed rule change, including the above-referenced Exhibits and Amendment No. 1, is available on CBOE's Web site (<http://www.cboe.org/Legal/SubmittedSECFilings.aspx>), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

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

<sup>2</sup> Due to a pending motion to reconsider the Commission's approval of SR-CBOE-2004-16, which was submitted on March 7, 2005, Amendment No. 1 removed certain language from the text of CBOE Rule 3.16(b) that was included with the original filing to reflect the stay of effectiveness of the text added by SR-CBOE-2004-16 pending a final Commission determination of the motion to reconsider. Accordingly, Amendment No. 1 revised the proposed rule change to reflect the text of CBOE Rule 3.16 as currently in effect, without the language added to the Rule by SR-CBOE-2004-16, and as it is proposed to be modified by the current rule filing. Amendment No. 1 also adds Exhibit 3d to the filing, which consists of an opinion letter received by CBOE from its special Delaware counsel that pertains to the proposed rule change.

<sup>6</sup> 17 CFR 200.30-3(a)(12).