

dilemma. If an interpretation did not achieve the 80% approval of each class of voting members, the interpretation could not be enforced. However, CBOE would still need to know how the Exercise Right should apply under the changed circumstances. But under the view that any interpretation CBOE might adopt in such circumstances must be treated as an amendment to Article Fifth(b), CBOE could be paralyzed because conceivably no interpretation would receive the necessary vote. In other words, where CBOE has no choice but to interpret Article Fifth(b) in response to changed circumstances and where its interpretation is entirely consistent with the language of Article Fifth(b), CBOE must be able to make such an interpretation without having to satisfy the requirements that would apply if Article Fifth(b) were being amended.

### 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 Exchange 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, as amended, 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-2005-20 on the subject line.

#### *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-2005-20. 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 Room. 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-2005-20 and should be submitted on or before April 28, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51468; File No. SR-CBOE-2005-18]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to a Fee Cap for Options Dividend Spread Transactions

April 1, 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 2, 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 CBOE. On March 17, 2005, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> CBOE designated the proposed rule change, as amended, as establishing or changing a due, fee, or other charge imposed by CBOE under section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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 parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to modify its fee cap on dividend spread transactions and to update the symbol for the Nasdaq-100 Index Tracking Stock. The text of the proposed rule change is available on CBOE's Web site (<http://www.cboe.com>), 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, 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

In July 2004, the Exchange implemented a program under which market-maker, firm and broker-dealer transaction fees associated with "dividend spread" transactions are

<sup>3</sup> Amendment No. 1 replaced and superseded the proposed rule change in its entirety. Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE, and Steve L. Kuan, Attorney, Division of Market Regulation, Commission, on March 30, 2005. In Amendment No. 1, CBOE clarified that the effective date of the Fee Schedule is March 2, 2005, the date CBOE initially filed the proposed rule change. Further, CBOE proposed that the fee cap on dividend spread transactions operate on a pilot basis until September 1, 2005.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</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.

capped at \$2,000 per dividend spread transaction.<sup>6</sup> CBOE defines a dividend spread as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options. This program is similar to fee cap programs adopted by other exchanges.<sup>7</sup>

The Exchange proposes to amend its Fee Schedule to enhance its dividend spread fee cap program. Specifically, the Exchange proposes to cap market-maker, firm, and broker-dealer transaction fees at \$2,000 for all dividend spread transactions executed on the same trading day in the same options class. The Exchange proposes to implement the enhanced fee cap program as a pilot program that will expire on September 1, 2005. The Exchange believes that enhancing the fee cap to accommodate these transactions will attract additional liquidity.

As is done under the current program, the Exchange will rebate transaction fees for qualifying transactions. Members who wish to benefit from the fee cap will be required to submit to the Exchange a rebate request form with supporting documentation (e.g., clearing firm transaction data).

In addition, the Exchange proposes to update the Fee Schedule in various places to reflect the symbol change, from QQQ to QQQQ, that accompanied the transfer of the listing of the Nasdaq-100 Index Tracking Stock from the American Stock Exchange to the Nasdaq Stock Market.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>8</sup>, in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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

CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

<sup>6</sup> See Securities Exchange Act Release No. 50175 (August 10, 2004), 69 FR 51129 (August 17, 2004) (SR-CBOE-2004-38).

<sup>7</sup> See Securities Exchange Act Release Nos. 48363 (August 19, 2003), 68 FR 51625 (August 27, 2003) (SR-PCX-2003-39); 48983 (December 23, 2003), 68 FR 75703 (December 31, 2003) (SR-Phlx-2003-80); and 49358 (March 3, 2004), 69 FR 11469 (March 10, 2004) (SR-Amex-2004-09).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

### 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, as amended.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>11</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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.<sup>12</sup>

### 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-2005-18 on the subject line.

#### 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-2005-18. 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/>

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to have commenced on March 17, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C)

[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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2005-18 and should be submitted on or before April 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-1600 Filed 4-6-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51465; File No. SR-CHX-2005-04]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Stock Exchange, Inc. To Clarify That Specialists May Not Charge Commissions With Respect to the Execution of CHXpress Orders

April 1, 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 1, 2005, the Chicago Stock Exchange, Inc. ("CHX" 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 Exchange. On March 21, 2005, the Exchange filed Amendment No. 1 to

<sup>13</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.