

The Commission further notes that in approving this proposal, it relied on the Exchange's discussion of how Nasdaq currently calculates the Index. If the manner in which Nasdaq calculates the Index were to change substantially, this approval order might no longer be effective.

In addition, the Commission believes that the position limits for these new options, and the hedge exemption from such position limits, are reasonable and consistent with the Act. The Commission previously has found identical provisions for NDX and MNX options to be consistent with the Act.<sup>28</sup>

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. Because options on the Nasdaq 100 Index already trade already trade on the Amex, accelerating approval of the Amex's proposal should benefit investors by updating the Exchange's rules to reflect the updates that should have been made when the Amex began trading the options in October 2001.<sup>29</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (SR-Amex-2005-38), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>31</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>28</sup> See Securities Exchange Act Release No. 44156 (April 6, 2001), 66 FR 19261 (April 13, 2001) (SR-CBOE-00-14) (order approving a proposed rule change by CBOE to increase position and exercise limits for Nasdaq 100 Index options, expand the Index hedge exemption, and eliminate the near-term position limit restriction).

<sup>29</sup> The Commission notes that, for purposes of inspection and compliance, this approval is not retroactive.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51888; File No. SR-CBOE-2005-47]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Exchange's Hybrid Trading System and Hybrid 2.0 Platform

June 20, 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 June 14, 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 Exchange. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</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 clarify its rules that relate to the designation of index options and options on ETFs on CBOE's Hybrid Trading System and Hybrid 2.0 Platform. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

Chicago Board Options Exchange, Incorporated

Rules

Rule 6.45B—Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System

Generally: The rules of priority and order allocation procedures set forth in this rule shall apply only to index options and options on ETFs that have been designated [by the appropriate Exchange procedures committee] for

<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)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

trading on the CBOE Hybrid System. The term "market participant" as used throughout this rule refers to a Market-Maker, a Remote Market-Maker, an in-crowd DPM or LMM, an e-DPM with an appointment in the subject class, and a floor broker representing orders in the trading crowd. The term "in-crowd market participant" only includes an in-crowd Market-Maker, in-crowd DPM or LMM, and floor broker representing orders in the trading crowd.

(a)—(d) No change.

\* \* \* Interpretations and Policies:

No change.

#### Rule 8.14 Index Hybrid Trading System Classes: Market-Maker Participants

(a) Generally: The *appropriate* Exchange procedures committee (i) may authorize for trading on the CBOE Hybrid Trading System or Hybrid 2.0 [Program] *Platform* index options and options on ETFs [currently] trading on the Exchange *prior to June 10, 2005 and (ii)* [The appropriate Exchange procedures committee] *if that authorization is granted*, shall determine the eligible categories of market maker participants for *those* options [classes currently trading on the Exchange]. *For index options and options on ETFs trading for the first time on the Exchange on or subsequent to June 10, 2005, the Exchange shall determine the appropriate trading platform (e.g., CBOE Hybrid Trading System, Hybrid 2.0 Platform) and the eligible categories of market maker participants on that platform. The Exchange shall also have the authority to determine whether to change the trading platform on which those options trade and to change the eligible categories of market maker participants for those options. The eligible categories of market maker participants, which* may include:

\* \* \* \* \*

(b) Each class designated [by the appropriate Exchange committee] for trading on Hybrid or the Hybrid 2.0 Platform shall have an assigned DPM or LMM. *The Exchange or the appropriate Exchange committee, as applicable pursuant to the authority granted under CBOE Rule 8.14(a) to determine eligible categories of market maker participants,* [The appropriate Exchange committee] may determine to designate classes for trading on Hybrid or the Hybrid 2.0 Platform without a DPM or LMM provided the following conditions are satisfied:

\* \* \* \* \*

## 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, 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 Exchange 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 proposes to make a technical revision in CBOE Rule 8.14(a) to change "Hybrid 2.0 Program" to "Hybrid 2.0 Platform" since this is a defined term under CBOE Rule 1.1. CBOE Rule 8.14(a) currently sets forth the general rules that determine which index options and options on ETFs the Exchange procedures committee may designate for trading on CBOE's Hybrid Trading System and Hybrid 2.0 Program. CBOE Rule 8.14(a) currently provides that "[t]he Exchange procedures committee may authorize for trading on the CBOE Hybrid Trading System or Hybrid 2.0 Program index options and options on ETFs currently trading on the Exchange. The appropriate Exchange procedures committee shall determine the eligible categories of market maker participants for option classes currently trading on the Exchange \* \* \*."

The Exchange proposes to (i) establish the cut-off date that determines which index options and options on ETFs the appropriate Exchange procedures committee may authorize for trading on the Hybrid Trading System or the Hybrid 2.0 Platform; and (ii) set forth in CBOE Rule 8.14 that the Exchange shall determine the trading platform and eligible categories of market maker participants in classes trading for the first time on the Exchange after the cut-off date.

Specifically, the Exchange proposes to delete the word "currently" in CBOE Rule 8.14(a) and insert the specific date of June 10, 2005 to clarify that the appropriate Exchange procedures committee may authorize for trading on the Hybrid Trading System or the Hybrid 2.0 Platform those index options and options on ETFs that are trading on the Exchange prior to June 10, 2005.

June 10, 2005, is the date of Commission approval of SR-CBOE-2004-87<sup>5</sup>, which rule filing created rules, including CBOE Rule 8.14, that permit the trading of index options and options on ETFs on CBOE's Hybrid Trading System and Hybrid 2.0 Platform either with a Designated Primary Market-Maker ("DPM"), a Lead Market-Maker ("LMM"), or without a DPM or LMM where a requisite number of assigned market-makers exist. Although the word "currently" was originally used to delineate the date of Commission approval of SR-CBOE-2004-87, the Exchange believes the proposed language that sets forth the specific date of Commission approval is clearer in this regard.

Second, the Exchange is proposing to add two sentences to CBOE Rule 8.14(a) to clarify that for index options and options on ETFs that are trading for the first time on the Exchange on or subsequent to June 10, 2005, the Exchange generally, as opposed to the appropriate Exchange procedures committee, would determine the appropriate platform on which such options would trade, and the Exchange would also determine the eligible categories of market maker participants trading on such platform. Although the Exchange believes that the current construction of CBOE Rule 8.14(a) fairly implies that the Exchange retains the authority to determine the trading platform and eligible categories of market maker participants over products not currently trading<sup>6</sup> on the Exchange, the proposed rule change, as set forth in CBOE Rule 8.14(a), would clarify the Exchange's authority in this regard.

Third, corollary changes are being proposed in CBOE Rule 8.14(b) to further clarify that the authority retained by the Exchange under Rule 8.14(a), with respect to determining eligible categories of market maker participants, would extend to determining whether to designate index options or options on ETFs for trading on the Hybrid Trading System or Hybrid 2.0 Platform without a DPM or LMM.

Lastly, the Exchange proposes to remove language from the introduction section of CBOE Rule 6.45B to clarify that CBOE Rule 8.14(a), and not CBOE Rule 6.45B, governs how index options and options on ETFs are to be authorized for trading on CBOE's

Hybrid Trading System and Hybrid 2.0 Platform.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular, in that it should promote just and equitable principles of trade, 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. Specifically, the Exchange believes that the proposed rule change clarifies the meaning of current Exchange rules that are already fairly implied by the language therein.

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

CBOE does not believe that the proposed rule change will impose any burden on competition 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

The Exchange neither solicited nor received written comments on the proposed rule change.

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

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and Rule 19b-4(f)(1) thereunder,<sup>10</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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 proposed rule change is consistent with the Act.

<sup>5</sup> See Securities Exchange Act Release No. 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (SR-CBOE-2004-87).

<sup>6</sup> As explained in the immediately preceding paragraph, the Exchange is deleting "currently" and inserting June 10, 2005 to provide an exact date of reference in Rule 8.14(a).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>10</sup> 17 CFR 240.19b-4(f)(1).

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-2005-47 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-47. 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-2005-47 and should be submitted on or before July 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51889; File No. SR-CHX-2005-18]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Submission of Immediate or Cancel CHXpress Orders

June 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 3, 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 and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</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 amend its rules to permit the submission of immediate or cancel CHXpress orders. The text of the proposed rule change is included below. *Italics* indicate new text.

\* \* \* \* \*

#### Article XX

##### Regular Trading Sessions

\* \* \* \* \*

##### Guaranteed Execution System and Midwest Automated Execution System

RULE 37. (a) No change to text.

(b) No change to text.

\* \* \* \* \*

(11) CHXpress Orders. This section applies to the execution and display of orders through CHXpress, an automated functionality offered by the Exchange. All other rules of the Exchange are applicable, unless expressly superseded by this section.

(A) Only an unconditional round lot limit order, or a round lot limit order with an "immediate or cancel"

condition, is eligible for entry as a CHXpress order. A CHXpress order may not be entered until an order has been executed on the primary market in the subject issue. A CHXpress order is good only for the day on which it is submitted and will be automatically cancelled at the end of each day's trading session. CHXpress orders shall be identified with the designator "XPR."

(B) No change to text.

(C) No change to text.

(D) If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for display or later execution, in accordance with CHX rules, *unless the CHXpress order is an "immediate or cancel" order, in which case it will be automatically cancelled.* A CHXpress order will be instantaneously displayed, when it constitutes the best bid or offer in the CHX book. A CHXpress order, however, will not be displayed, if its display would improperly lock or cross another ITS market. If the display of a CHXpress order would improperly lock or cross another ITS market, the CHXpress order will be automatically cancelled.

\* \* \* \* \*

#### 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 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 Exchange 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 rolling out a new, automated functionality for the handling of particular orders, called CHXpress™. According to the Exchange, the CHXpress functionality is designed to provide additional opportunities for the Exchange's participants to seek and receive liquidity through automated executions of orders at the Exchange.<sup>5</sup> With a few exceptions, CHXpress orders will be executed immediately and

<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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 50481 (September 30, 2004); 69 FR 60197 (October 7, 2004).

<sup>11</sup> 17 CFR 200.30-3(a)(12).