

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 the filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2005-043 and should be submitted on or before August 5, 2005.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>10</sup> and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest.

The Commission notes that the Pilots, which establish securities allocation and performance evaluation procedures for specialists trading UTP securities, were approved by the Commission in April and October of 2002, respectively,<sup>11</sup> and were most recently extended through April 6, 2005.<sup>12</sup>

The Commission finds that it is consistent with the Act to permit retroactive application of the Pilots from the expiration date of the current Pilots and to extend the Pilots through April 6, 2006, to allow market participants to continue to use the securities allocation and performance evaluation procedures set forth therein.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> to approve the proposed rule change prior to the thirtieth day after

the date of publication of notice in the **Federal Register**. Specifically, the Commission notes that the accelerated approval of the proposal will allow the Pilots to continue without interruption. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>14</sup> to approve the proposal on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Amex-2005-043), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51993; File No. SR-CBOE-2005-29]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to the Composition of the CBOE's Modified Trading System Appointments Committee

July 7, 2005.

On April 19, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend CBOE Rule 8.82 to provide that the members of the Exchange's Modified Trading System Appointments Committee ("MTS Committee")<sup>3</sup> will be appointed in accordance with CBOE Rule 2.1 (Committees of the Exchange). The proposed rule change was published for comment in the **Federal**

**Register** on May 25, 2005.<sup>4</sup> The Commission received no comments on the proposal.

The Exchange proposes to revise CBOE Rule 8.82 to delete provisions relating to the composition of and election procedures for the MTS Committee and to establish that the selection of MTS Committee members and the determination of the MTS Committee's composition shall be made in accordance with CBOE Rule 2.1.<sup>5</sup> CBOE Rule 2.1 provides, in part, that the Vice Chairman of the CBOE Board of Directors ("Vice Chairman"), with the approval of the Board of Directors ("Board"), shall appoint the chairmen and members of certain committees provided for in CBOE Rule 2.1, or any other committees established in accordance with the Exchange's Constitution. CBOE Rule 2.1 also provides that the Vice Chairman has the authority to remove any member of such committees and to fill any vacancies for the remainder of the pertinent committee term. Further, CBOE Rule 2.1 requires the Vice Chairman to consider having, where appropriate, a cross section of the membership represented on each committee and also provides that the MTS Committee is subject to the control and supervision of the Board.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>6</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>8</sup> in particular, which requires, among other things, that the rules of an exchange be designed to 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

<sup>4</sup> See Securities Exchange Act Release No. 51704 (May 18, 2005), 70 FR 30156.

<sup>5</sup> Among other things, CBOE Rule 8.82 specified that members of the MTS Committee were elected to serve on the MTS Committee by the Exchange's membership at the Exchange's annual election and that MTS Committee candidates were to be nominated by the Exchange's Nominating Committee (or by petition). CBOE Rule 8.82 also had requirements regarding the MTS Committee's composition.

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>9</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See Pilot Approval Orders, *supra* note 3.

<sup>12</sup> See 2004 Notice, *supra* note 6.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(5).

<sup>15</sup> *Id.*

<sup>16</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.

<sup>3</sup> Generally, under CBOE rules, the MTS Committee is assigned the authority to make determinations concerning whether to grant or withdraw the approval to act as a designated primary market maker ("DPM"), among other things. See, specifically, CBOE Rule 8.80 and, generally, CBOE Rules 8.80 through 8.94, which provide the scope of the MTS Committee's authority over DPMs.

system, and, in general, to protect investors and the public interest.

The Commission notes that the proposal is designed to provide the Exchange with greater flexibility with respect to the appointment of members of the MTS Committee by no longer mandating the composition of and election procedures for the MTS Committee and, instead, utilizing the process set forth in CBOE Rule 2.1.

In the Commission's view, because CBOE Rule 2.1 provides that the Vice Chairman must consider having, where appropriate, a cross section of the membership represented on each committee; the Board must approve the Vice Chairman's committee appointments, which would now include appointments to the MTS Committee; and ultimately, the MTS Committee is subject to the control and supervision of the Board, the proposal is consistent with the requirements of Section 6(b)(5) of the Act.<sup>9</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2005-29) be, and hereby is, approved.

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. 34-52005; File No. SR-CBOE-2005-17]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To Adopt a Revenue Sharing Program for Trades in Tape B Securities

July 11, 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 February 7, 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 Exchange proposes to amend its Fee Schedule to adopt a Revenue Sharing Program ("Program") for trades in Tape B securities.<sup>3</sup> Under this Program, the Exchange is proposing to share with CBOE Designated Primary Market-Makers ("DPMs") and market-makers who trade Tape B securities a portion of the revenues that the Exchange receives under the Consolidated Tape Association Plan ("CTA Plan") attributable to Tape B securities.<sup>4</sup> The Exchange proposes to begin the Program upon the launch of its new stock trading platform.<sup>5</sup> The text of the proposed rule change is available on the CBOE's Web site (<http://www.cboe.com>), at the CBOE's principal office, 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, the 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 proposes to amend its Fee Schedule to adopt a Revenue Sharing Program for trades in Tape B securities. Under this Program, the Exchange is proposing to share with CBOE DPMs and market-makers who trade Tape B securities a portion of the revenues that the Exchange receives under the CTA Plan attributable to Tape

B securities. The Exchange proposes to begin the Program upon the launch of its new stock trading platform.

The purpose of the proposed rule change is to attract additional business in Tape B securities traded on the Exchange. The Program is intended to encourage DPMs and market-makers who trade Tape B securities to compete for increased market share in these products and help them offset some of their expenses.

The Program is proposed to operate as follows: Each quarter, the Exchange will start its calculation with the Tape B quarterly revenues actually received by the Exchange. First, the Exchange will determine the portion of such quarterly revenues attributable to the trading of each Tape B security. Then, the Exchange will subtract the amounts it owes under its license agreements for various Tape B securities (e.g., QQQQ, SPY, DIA) for the prior quarter. License fees will be offset by Tape B revenue on a product specific basis (e.g., QQQQ tape revenue may only be used to offset QQQQ license fees). All license fees owed but not covered in the current quarter will roll forward into the subsequent quarter(s).

Tape B revenue, net of license fee payments, will then be shared between the Exchange, DPMs and market-makers in the following order of priority, in each case to the extent that any residual Tape B revenue is available: 50% to the Exchange; 25% to the DPM; and 25% pro-rata between market-makers with the remainder going to the DPM. Revenue generated via trades with no crowd participation (i.e., customer crosses), will be distributed as outlined above.

The application of the Program can be demonstrated by the following example:

- Assume each "print" creates \$1 in after license fees are deducted.
- Assume there is a DPM and two market-makers (MMs) eligible for tape revenue.
- Assume there are 100,000 prints in the quarter.
- MM1 is on 50% of the eligible prints and averages 50% of the trade volume per print they participated.
- MM2 is on 15% of the eligible prints and average 80% of the trade volume per print they participated.

CTA Plan, which are known as the Plan Participants.

<sup>5</sup> The CBOE has filed a proposed rule change (SR-CBOE-2004-21) to adopt a new set of rules to allow for the trading of non-option securities on CBOEdirect, the exchange's screen based trading system.

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

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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.

<sup>3</sup> Tape B securities are securities listed on the American Stock Exchange or the regional national securities exchanges.

<sup>4</sup> The CTA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act, (15 U.S.C. 78k-1, and Rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2). The CTA Plan governs, among other things, the collection, consolidation and dissemination of transaction reports in certain securities and the distribution of the revenues derived therefrom among parties to the