

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

- Assume customer to customer trades account for 20% of prints for the quarter.

	Rev share	C-DPM/MM	Cust/cust	Total
Number of Prints:100,000 .....		80,000	20,000	100,000
Exchange .....	50%	40,000	10,000	50,000
DPM .....	25%	20,000	5,000	25,000
To be allocated (see below) .....	25%	20,000	5,000	25,000
	Prints %	Vol.%		
MM1 .....	0.50	0.50	0.25	5,000
MM2 .....	0.15	0.80	0.12	2,400
DPM (balance of volume) .....				600
				15,750

The Exchange's proposal is substantially similar to tape credit or rebate programs that have been approved for other self-regulatory organizations.<sup>6</sup> As a result, the Exchange believes that Commission approval of this proposal would only be allowing the Exchange to operate a revenue sharing program that could compete on substantially similar footing with programs of other markets.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>7</sup> in general, and with Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The CBOE does not believe that the proposed rule change would 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 self-regulatory organization 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-2005-17 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2005-17. 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, 100 F Street, NE., 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-2005-17 and should be submitted on or before August 5, 2005.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>6</sup> See e.g., Securities Exchange Act Release Nos. 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002) (SR-BSE-2002-10); 47940 (May 29, 2003), 68 FR 33556 (June 4, 2003) (SR-{PHLX-2002-77); 49981 (July 7, 2004), 69 FR 42233 (July 14, 2004) (SR-CHX-2004-08).

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

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).