

calculated based on the number of contracts the sending and receiving Linkage Plan participants ("Participants") guaranteed they would automatically execute. Now that all Participants disseminate dynamic quotes with size, the Participants believe that it is appropriate to calculate the FCQS based on the size of the disseminated quotation of the Participant receiving the P/A Order. Accordingly, the Exchange proposes to amend CBOE Rule 6.80 to effect this change.<sup>7</sup>

The other purpose of the proposed rule change is to eliminate a 15-second wait period for sending a secondary P/A Order currently provided in Exchange Rule 6.81(b)(2). Exchange Rule 6.81(b)(2) governs the manner in which a P/A Order larger than the FCQS can be broken into smaller P/A Orders. Currently, Exchange Rule 6.81(b)(2) provides that an initial P/A Order can be sent to the Participant disseminating the National Best Bid or Offer for the FCQS, and if that Participant continues to disseminate the same price after 15 seconds from the execution of the initial P/A Order, a subsequent P/A Order can be sent for at least the lesser of (i) the size of the disseminated quote; (ii) 100 contracts; or (iii) the remainder of the customer order underlying the P/A Orders. The Exchange proposes to eliminate the 15-second waiting period because the dynamic quotes with size now employed by the Participants obviate the need for a manual quote refresh period for P/A Orders. This proposed rule change would conform the CBOE rules to the pending Amendment No. 16 to the Linkage Plan.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is 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 system, and, in general, to protect investors and the public interest.

<sup>7</sup> The Commission added to this sentence pursuant to a telephone conversation with CBOE, as noted herein. Telephone call between Tim Fox, Special Counsel, Commission, and Patrick Sexton, Assistant General Counsel, CBOE on September 12, 2005.

<sup>8</sup> See *Supra* note 3.

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

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

### 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

Written comments were neither solicited nor received.

## 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-2005-68 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-2005-68. 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 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 publicly available. All submissions should refer to File Number SR-CBOE-2005-68 and should be submitted on or before October 11, 2005.

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

**Jonathan G. Katz,**  
*Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52423; File No. SR-CBOE-2005-76]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

September 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 13, 2005, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which

<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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

renders it 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 CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the "Rule"), relating to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System ("Hybrid"), through December 14, 2005. No other substantive changes are being made to the Rule. 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 those 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 parts of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

In March 2005, the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.<sup>5</sup> Among other things, the Rule, pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, the Rule was amended to limit its duration until September 14, 2005, unless otherwise extended. As the duration period expires on September 14, 2005, the Exchange proposes to extend the

effectiveness of the Rule through December 14, 2005.<sup>6</sup>

##### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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

The 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 comments on the proposal.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

<sup>6</sup> In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of the Rule, members are also required to comply with the requirements of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) restricts securities transactions of a member of any national securities exchange effected on that exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange will issue a regulatory circular to members reminding them of the applicability of these Section 11(a)(1) requirements.

<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).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Commission Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the Rule without interruption. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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. 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-2005-76 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-2005-76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

<sup>11</sup> *Id.*

<sup>12</sup> For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR-CBOE-2004-75).

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, 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-2005-76 and should be submitted on or before October 11, 2005.

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 05-18674 Filed 9-19-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52422; No. SR-DTC-2005-11]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish an Insurance Program as Part of the Profile Modification System Feature of Its Direct Registration System

September 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 22, 2005, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on August 22, 2005, amended<sup>2</sup> the rule change described in Items I, II, and III below,

which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The rule change establishes an insurance program as part of DTC's Profile Modification System ("Profile") of its Direct Registration System ("DRS").

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the rule change and discussed any comments it received on the rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Profile allows a DTC participant to submit electronically to a transfer agent that is a DRS limited participant an investor's instruction that its share positions be moved from the investor's DRS account with the DRS limited participant to the investor's broker-dealer's participant account at DTC. Similarly, a DRS limited participant may submit an investor's instruction for the movement of its share positions from the investor's broker-dealer's participant account at DTC to an account maintained by the DRS limited participant.

Currently, all Profile users must agree to a Participant Terminal System ("PTS") screen indemnity as part of their use of Profile and must procure a surety bond relating to their obligations under such indemnity ("Surety Program"). Participation in the Surety Program requires the payment of an annual premium of \$3,150 to a surety provider and a DTC administration fee of \$250. The Surety Program provides for a coverage limit of \$3 million per occurrence and an annual aggregate limit of \$6 million.

DTC believes the cost of the annual surety and the coverage limit may be a

disincentive for some to use Profile. In order to encourage greater participation in the service, DTC proposes the implementation of the DTC Profile Modification System Indemnity Insurance Program ("Insurance Program"). Under the Insurance Program, Profile users will have the option to procure indemnity insurance with higher coverage limits (\$25 million per occurrence per policy with an annual aggregate limit of \$100 million) than the surety bond under the Surety Program provides, which will allow larger transactions to be covered under one policy. Furthermore, Profile users will have the option to procure indemnity insurance at an annual fee that is less than the premium for the Surety Program. In addition to any pass-through fee from the insurer, DTC will charge users participating in the Insurance Program an annual administration fee of \$250 and a \$2.50 per transaction fee. Users will be able to participate in both the Surety Program and the Insurance Program but would be required and permitted to use only one provider per Profile transaction.

The issuing insurance company will be either a company selected by DTC as the administrator of such insurance or an insurance company selected by the user procuring the insurance, provided the insurance company will issue insurance subject to the terms and conditions established by DTC for the Insurance Program.

DTC believes the rule change is consistent with Section 17A of the Act,<sup>4</sup> as amended, because it is a modification of a DTC service that enhances the safeguards for transactions processed in the service. As such it is a change to an existing service that will not adversely affect the safeguarding of securities and funds in DTC's custody or control.

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

DTC does not believe that the rule change will have any impact or impose any burden on competition.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the rule change have not yet been solicited or received. DTC will notify the Commission of any written comments it receives.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The amendment corrected a pagination error in the original filing.

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup> 15 U.S.C. 78q-1.