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 BOX. 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–BSE–2005–52 and should be submitted on or before January 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–8043 Filed 12–28–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53016; File No. SR–CBOE–2005–107]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Marketing Fee Program

December 22, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 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 CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] 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 CBOE proposes to amend its Fees Schedule and its marketing fee program. The Exchange states that these changes to the marketing fee program would be effective December 12, 2005, and would continue until June 2, 2006.

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

Chicago Board Options Exchange, Inc.—Fees Schedule

[December 1] *December 9*, 2005

1. No Change.
2. MARKETING FEE (6)(16): $[.22].*65*
3.–4. No Change.

FOOTNOTES:

(1)–(5) No Change.

(6) *Commencing on December 12, 2005*, [T]*t*he Marketing Fee will be assessed only on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs *resulting from orders for less than 1,000 contracts (i) from payment accepting firms, or (ii) that have designated a ''Preferred Market-Maker'' under CBOE Rule 8.13* at the rate of [$.22] *$.65* per contract on all classes of equity options, options on HOLDRs, options on SPDRs, and options on DIA. The fee will not apply to Market-Maker-to-Market-Maker transactions *or transactions resulting from P/A orders.* This fee shall not apply to index options and options on ETFs (other than options on SPDRs and options on DIA). If less than 80% of the marketing fee funds are paid out by the DPM/*LMM* or [LMM] *Preferred Market-Maker* in a given month, then the Exchange would refund such surplus at the end of the month on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs, DPMs and LMMs. However, if 80% or more of the accumulated funds in a given month are paid out by the DPM/*LMM* or [LMM] *Preferred Market-Maker*, there will not be a rebate for that month and the funds will carry over and will be included in the pool of funds to be used by the DPM/*LMM* or [LMM] *Preferred Market-Maker* the following month. At the end of each quarter, the Exchange would then refund any surplus, if any, on a pro rata basis based upon contributions made by the Market-Makers, RMMs, DPMs, e-DPMs and LMMs. CBOE's marketing fee program as described above will be in effect until June 2, 2006.

Remainder of Fees Schedule—No change.

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

On November 2, 2005, the CBOE amended its marketing fee program in a number of respects in light of the recent adoption of its Preferred Market-Maker program.[5] In particular, the CBOE amended its marketing fee program to provide that a Market-Maker will have access to the marketing fee funds generated by orders sent to the Exchange designating that Market-Maker as a ''Preferred Market-Maker.'' The CBOE now proposes to amend its marketing fee program, which changes would be effective December 12, 2005, and would continue until June 2, 2006 (which is the same date that the CBOE's Preferred Market-Maker program is scheduled to expire, unless extended).[6]

Current Marketing Fee Program

The current marketing fee is assessed upon Designated Primary Market-Makers (''DPMs''), Electronic DPMs (''e-DPMs''), Remote Market-Makers (''RMMs''), Lead Market-Makers (''LMMs''), and Market-Makers at a rate

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange states that, under its Preferred Market-Maker program, order providers can send an order to the Exchange designating any CBOE Market-Maker (including any DPM, e-DPM, LMM, RMM, and Market-Maker) as a Preferred Market-Maker. If the Preferred Market-Maker is quoting at the NBBO at the time the order is received on CBOE, the Preferred Market-Maker is entitled to a participation entitlement of 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange and 40% when there are two or more Market-Makers quoting at the best bid/offer on the Exchange. *See* Securities Exchange Act Release No. 52506 (September 23, 2005), 70 FR 57340 (September 30, 2005) (SR–CBOE–2005–58).

[6] *See* CBOE Rule 8.13.

of $0.22 for every contract they enter into on the Exchange other than Market-Maker-to-Market-Maker transactions (which includes all transactions between any combination of DPMs, e-DPMs, RMMs, LMMs, and Market-Makers).[7] The marketing fee is assessed in all equity option classes and options on HOLDRs®, options on SPDRs®, and options on DIA. The following is a description of the three-step process by which the entire pool of funds generated by the marketing fee is apportioned between the DPM or LMM, and Preferred Market-Makers.

First, each month all funds generated by the marketing fee are collected by the Exchange and recorded according to the DPM or LMM, as applicable, station, and class where the option classes subject to the fee are traded. If a Market-Maker (including any DPM, e-DPM, LMM, and RMM) is designated as a Preferred Market-Maker on an order from a payment accepting firm (''PAF''), the Market-Maker will be given access to the marketing fee funds generated from that order, even if the Preferred Market-Maker did not participate in the execution of the order because the Market-Maker was not quoting at the NBBO at the time the order was received on the CBOE.

Second, the DPM or LMM, as applicable, are given access to the marketing fee funds generated from all other orders from PAFs in its appointed classes in a particular trading station.

Third, the marketing fee funds generated by orders from non-PAFs, if any, are apportioned monthly among the DPM or LMM, and Preferred Market-Makers on a on a pro-rata basis, based on the percentage of contracts traded by each DPM or LMM, and Preferred Market-Maker against orders from PAFs during the month in the option classes located at a particular trading station.

Revised Marketing Fee Program—Effective December 12, 2005

Effective December 12, 2005, the CBOE proposes to amend the fee such that it is assessed upon DPMs, LMMs, e-DPMs, RMMs, and Market-Makers at the rate of $.65 per contract on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from orders for less than 1,000 contracts (i) from payment accepting firms (''PAF''), or (ii) that have designated a ''Preferred Market-Maker'' under CBOE Rule 8.13 (''Preferred orders''). The Exchange states that Market-Maker-to-Market-Maker transactions (which include all transactions between any combination of DPMs, e-DPMs, RMMs, LMMs, and Market-Makers) would continue to be excluded from the fee, and the CBOE would also now exclude transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from inbound P/A orders. The marketing fee would also continue to be assessed in all equity option classes and options on HOLDRs®, options on SPDRs®, and options on DIA.

The following is a description of the manner in which funds generated by the marketing fee would be allocated between the DPM or LMM, and Preferred Market-Makers.

First, if a Market-Maker (including any DPM, e-DPM, LMM, and RMM) is designated as a Preferred Market-Maker on an order for less than 1,000 contracts, the Market-Maker would be given access to the marketing fee funds generated from the Preferred order, even if the Preferred Market-Maker did not participate in the execution of the Preferred order because the Market-Maker was not quoting at the NBBO at the time the Preferred order was received on the CBOE.[8]

Second, the DPM or LMM, as applicable, would be given access to the marketing fee funds generated from all other orders for less than 1,000 contracts from PAFs in its appointed classes in a particular trading station.

The Exchange states that, as in the current program, the money collected would be disbursed by the Exchange according to the instructions of the DPM, LMM, or Preferred Market-Maker. These funds could only be used to attract order flow to CBOE, and the funds made available to the DPM or LMM could only be used to attract orders in the option classes located at the trading station where the fee was assessed. Thus, a member organization appointed as the DPM at a particular trading station on the trading floor could not use the funds from that trading station to attract order flow to another trading station on the trading floor where that member organization serves as the DPM.

With respect to the rebate provisions of its marketing fee program, the Exchange states that currently, if a Preferred Market-Maker does not disburse all of the funds generated by the marketing fee in a given month, then the funds the Preferred Market-Maker does not disburse are made available to the DPM or LMM, as applicable, for the following month to attract orders in the classes of options where the DPM or LMM is appointed. Going forward, the CBOE proposes to allow the Preferred Market-Maker to carry-over any funds it does not disburse in a given month to the same extent a DPM or LMM is permitted to do so.

Thus, the Exchanges states that its marketing fee program as amended would provide that if less than 80% of the marketing fee funds are paid out by the DPM/LMM or Preferred Market-Maker in a given month, then the Exchange would refund such surplus at the end of the month on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs, DPMs, and LMMs. However, if 80% or more of the accumulated funds in a given month are paid out by the DPM/LMM or Preferred Market-Maker, there would not be a rebate for that month and the funds will carry over and would be included in the pool of funds to be used by the DPM/LMM or Preferred Market-Maker the following month. At the end of each quarter, the Exchange states that it would then refund any surplus, if any, on a pro rata basis based upon contributions made by the Market-Makers, RMMs, DPMs, e-DPMs, and LMMs.

The Exchange states that it would not be involved in the determination of the terms governing the orders that qualify for payment or the amount of any such payment. The Exchange states that it would provide administrative support for the program in such matters as maintaining the funds, keeping track of the number of qualified orders each firm directs to the Exchange, and making the necessary debits and credits to reflect the payments that are made. The CBOE states that its Market-Makers, RMMs, DPMs, e-DPMs, and LMMs would have no way of identifying prior to execution whether a particular order is from a PAF or is an order designating a Preferred Market-Maker.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

[7] *See* Securities Exchange Act Release No. 52818 (November 22, 2005), 70 FR 71568 (November 29, 2005) (SR–CBOE–2005–91).

[8] For example, assume a Market-Maker is designated as a Preferred Market-Maker on an order for 50 contracts which is executed on CBOE. Under this first step, the Preferred Market-Maker would be given access to a total of $32.50 (50 contracts × $.65), whether or not the Preferred Market-Maker traded with the order or not.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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

No written comments were either solicited or received.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such 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. 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.* Please include File Number SR–CBOE–2005–107 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–2005–107. 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–2005–107 and should be submitted on or before January 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–8047 Filed 12–28–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53008; File No. SR–CBOE–2005–95]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Complex Orders on the Hybrid System

December 22, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 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 and II below, which Items have been prepared by the Exchange. The CBOE has filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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 amend CBOE Rule 6.53C, ''Complex Orders on the Hybrid System,'' to better describe the routing of complex orders and to include orders from Market-Makers and specialists on an options exchange as additional order categories eligible to be routed to the Hybrid System complex order book (''COB'') from PAR workstations or directly to the COB. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, 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 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 Commission recently approved CBOE Rule 6.53C, which sets forth the procedures used to trade complex orders on the CBOE's COB system.[6] Currently, CBOE Rule 6.53C provides that the appropriate Exchange committee may determine whether to allow complex orders to route to PAR or to the COB and whether to allow

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The CBOE has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 51271 (February 28, 2005), 70 FR 10712 (March 4, 2005) (order approving File No. SR–CBOE–2004–45).