

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

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53172; File No. SR-CBOE-2006-07]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Dividend, Merger, and Short Stock Interest Spread Fee Cap Program

January 24, 2006.

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 January 13, 2006, 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 CBOE. CBOE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19B-4(f)(2) 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, as amended, from interested persons.

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

CBOE proposes to amend its Fees Schedule to amend the definitions of dividend, merger and short stock interest spreads for purposes of the Exchange’s strategy fee cap program.

The text of the proposed rule change is available on CBOE’s Web site at <http://www.cboe.com>, at the Office of the Secretary at CBOE, 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 proposal. 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 currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend spread, merger spread and short stock interest spread transactions (“Strategy Fee Cap”). The definition of each strategy is set forth on the CBOE Fees Schedule.<sup>5</sup> The Strategy Fee Cap is in effect as a pilot program that is due to expire on March 1, 2006.

The Exchange proposes to amend the definitions of dividend, merger and short stock interest spreads for purposes of the Strategy Fee Cap program, in order to add clarity and to make the definitions more consistent with each other.

First, the Exchange proposes to amend the definitions of dividend, merger, and short stock interest spreads in order to clarify that transactions done to achieve a dividend, merger or short stock interest arbitrage do not necessarily need to be “spreads” in order to qualify for the Strategy Fee Cap. According to the market participants (generally professionals) that engage in these strategies, each of these strategies can be achieved either by purchasing and selling the same option series or different options series. Accordingly, as explained in further detail below, the Exchange proposes to revise each definition to refer to each strategy as a “strategy” instead of as a “spread” and to change each definition in certain respects to make clear that transactions done to achieve a dividend, merger, or short stock interest arbitrage that involve only one options series may also qualify for the Strategy Fee Cap.

Second, the Exchange is also proposing changes to the definition of each strategy to better reflect the similarities between the strategies.

Dividend, merger, and short stock interest strategies are strategies that have similar economic risks and are executed in similar ways. As explained in more detail below, each proposed definition will be clarified to reflect that each strategy involves the “purchase, sale and exercise” of options. Each proposed definition will also be clarified to reflect that the options involved must be of the “same class”.

The Exchange defines a dividend spread for purposes of the Strategy Fee Cap as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options. The Exchange proposes to change “dividend spread” to “dividend strategy”, and proposes to define a dividend strategy as “transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.” The word “two” is not included in the new definition so that transactions involving only a single options series that are done to achieve a dividend arbitrage may also qualify for the Strategy Fee Cap. The word “deep” is also not included in the new definition because the options used do not necessarily need to be deep-in-the-money options and also because of the difficulty in defining what constitutes “deep” in-the-money. The definition is clarified by making explicit two requirements: the options must be of the same class and the transactions must be effected prior to the date on which the underlying stock goes ex-dividend.

The Exchange defines a merger spread for purposes of the Strategy Fee Cap as a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock. The Exchange proposes to change “merger spread” to “merger strategy”, and proposes to define a merger strategy as “transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.” The proposed definition does not include the words “but with different strike prices” so that transactions involving only a single options series that are done to achieve

<sup>9</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)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> See CBOE Fees Schedule, fn. 13.

a merger arbitrage may also qualify for the Strategy Fee Cap. The word "simultaneous" is also not included in the new definition because the purchase and sale transactions do not necessarily need to be executed simultaneously.

The Exchange defines a short stock interest spread for purposes of the Strategy Fee Cap as a spread that uses two deep in-the-money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position. The Exchange proposes to change "short stock interest spread" to "short stock interest strategy", and proposes to define a short stock interest strategy as "transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class." The words "spread" and "two" are not included in the new definition so that transactions involving only a single options series that are done to achieve a short stock interest arbitrage may also qualify for the Strategy Fee Cap. The word "deep" is not included in the new definition for the same reasons it was removed from the definition of dividend strategy. Also, "put" is not included in the new definition because a short stock interest strategy can be accomplished using either calls or puts.

The Exchange proposes one additional minor clarifying change to footnote 13 of the Fees Schedule. The Exchange proposes to clarify that the \$50,000 per month fee cap is "per initiating member" as well as per initiating firm, because the cap also applies to individual members effecting these strategies.

The Exchange believes that accommodating these transactions by keeping fees low will attract additional liquidity to the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

### 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 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 on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>9</sup> because it establishes or changes a due, fee, or other charge. 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. 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-2006-07 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2006-07. 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 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-2006-07 and should be submitted on or before February 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53167; File No. SR-CBOE-2005-89]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Adoption of a Hybrid Agency Liaison System for Automated Handling of Inbound Orders That Are Not Automatically Executed

January 23, 2006.

On October 27, 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 adopt a Hybrid Agency Liaison ("HAL") system for automated handling of inbound orders for option classes trading on CBOE's Hybrid System ("Hybrid"). On December 7, 2005, the Exchange filed Amendment No. 1 to the

<sup>10</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>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).