

transactions resulting from dividend strategies, merger strategies, and short stock interest strategies, as defined in Footnote 13 of this Fees Schedule,<sup>7</sup> or cabinet trades (see CBOE Rule 6.54—*Accommodation Liquidations*).

CBOE states that it is not amending its marketing fee program in any other respects.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>10</sup> 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.

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

The Exchange does not believe that the proposed rule change, as amended, 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, as amended, has been designated as a

<sup>7</sup> CBOE notes that, as set forth in Footnote 13 of its Fees Schedule, a dividend strategy is defined 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. CBOE states that a merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale, and exercise of options of the same class and expiration date, 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. A short stock interest strategy is defined 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.

<sup>8</sup> CBOE notes that the fees currently assessed on transactions resulting from dividend strategies, merger strategies, and short stock interest strategies, as defined in Footnote 13 of its Fees Schedule, are part of a pilot program that will expire on September 1, 2006. See Securities Exchange Act Release No. 53412 (March 3, 2006), 71 FR 12752 (March 13, 2006) (SR-CBOE-2006-20). Telephone conversation between Patrick Sexton, Associate General Counsel, Exchange, and David Liu and Michou Nguyen, Attorneys, Division of Market Regulation, Commission, on March 7, 2006.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal, as amended, 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.<sup>13</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2006-23 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-2006-23. 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> The effective date of the original proposed rule change is March 1, 2006, and the effective date of Amendment No. 1 is March 16, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, the Commission considers the period to commence on March 16, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2006-23 and should be submitted on or before April 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-4340 Filed 3-24-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53524; File No. SR-CBOE-2006-22]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; 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

March 21, 2006.

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 March 8, 2006, the Chicago Board Options Exchange, Incorporated ("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 renders it effective upon filing with the Commission.<sup>5</sup> The Commission is

<sup>14</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).

<sup>5</sup> The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion *infra* Section III.

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"), which relates 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 July 14, 2006. No other substantive changes are being made to the Rule. The text of the proposed rule change is available on the CBOE's Internet 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>6</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. The duration of the Rule was thereafter extended through December 14, 2005 and again through March 14, 2006.<sup>7</sup> As the duration period expired

<sup>6</sup> See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR-CBOE-2004-75).

<sup>7</sup> See Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (extending the duration of the Rule through

on March 14, 2006, the Exchange proposes to extend the effectiveness of the Rule through July 14, 2006.<sup>8</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>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>10</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 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

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 does not (1) significantly affect

December 14, 2005) and 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (extending the Rule through March 14, 2006).

<sup>8</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 issued a regulatory circular to members informing them of the applicability of these Section 11(a)(1) requirements when the duration of the Rule was extended until December 14, 2005 and again when the duration of the Rule was extended until March 14, 2006. See CBOE Regulatory Circulars RG05-103 (November 2, 2005) and RG06-001 (January 3, 2006). The Exchange represents that it expects to issue a similar regulatory circular to members reminding them of the applicability of the section 11(a)(1) requirements with respect to the proposed rule change. Telephone conversation between Jennifer Lamie, Managing Senior Attorney, CBOE, and Ronesha A. Butler, Special Counsel, Division of Market Regulation, Commission (March 14, 2006).

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

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

the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.<sup>13</sup>

A proposed rule change filed under Commission Rule 19b-4(f)(6)<sup>14</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 upon filing.<sup>15</sup>

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 the 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:

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> Pursuant to Rule 19b-4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. See 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</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).

*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 No. SR-CBOE-2006-22 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-22. 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-2006-22 and should be submitted on or before April 17, 2006.

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

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-4367 Filed 3-24-06; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53503; SR-DTC-2006-01]

**Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Participant Exchange System**

March 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 19, 2006, The Depository Trust Company ("DTC") 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 primarily by DTC. 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**

Under the proposed rule change, DTC will disable its Participant Exchange ("PEX") buy-in functionality for the National Securities Clearing Corporation's ("NSCC") Continuous Net Settlement ("CNS") buy-ins on or about February 10, 2006.

**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 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. DTC 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**

Between 2003 and 2005, DTC made several rule filings to establish and enhance its SMART/Track service.<sup>2</sup> In rule filing SR-DTC-2005-19, DTC

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

<sup>2</sup> Securities Exchange Act Release Nos. 50029 (July 15, 2004), 69 FR 43870 (July 22, 2004) (Universal Hub, Stock Loan notification service); 50887 (Dec. 20, 2004), 69 FR 77802 (Dec. 28, 2004) (Corporate Action Liability Notification Service); 52104 (July 21, 2005), 70 FR 43730 (July 28, 2005) (SMART/Track for Agency Lending Disclosure); and 53032 (Dec. 28, 2005), 71 FR 1457 (Jan. 9, 2006) (SMART/Track for Buy-Ins) [SR-DTC-2005-19].

added the SMART/Track for Buy-Ins service that provides automated communication, warehousing, and tracking of various types of buy-in related notices.<sup>3</sup> As part of that filing, DTC announced that the SMART/Track for Buy-Ins service would replace the buy-in functionality of DTC's PEX platform.

Under this proposed rule change, DTC will disable the PEX functionality for NSCC's CNS buy-ins on or about February 10, 2006.<sup>4</sup> Accordingly, DTC participants and NSCC CNS users must register for the SMART/Track for Buy-Ins service. DTC has been assisting its participants and CNS users in this regard.

The PEX buy-in functionality for buy-ins other than NSCC CNS buy-ins (*i.e.* NYSE, AMEX, NASD, and NSCC Balance Order buy-ins) and for Municipal Securities Rulemaking Board closeouts will remain active until the final phase of SMART/Track for Buy-Ins is implemented, which is currently anticipated to happen in June 2006. When that happens, all PEX buy-in functionality will be disabled pursuant to a rule filing that DTC will file at that time.<sup>5</sup> DTC and NSCC will notify their participants of the exact date of such termination through Important Notices.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder because it is consistent with DTC's obligation to safeguard securities and funds in its custody or control.

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

DTC does not believe that the proposed 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**

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

<sup>3</sup> Securities Exchange Act Release No. 53032 *supra* note 2.

<sup>4</sup> DTC and NSCC have notified their respective participants of this action. DTC Important Notice B#9049-06 (Jan. 19, 2006) available online at [http://www.dtc.org/impNtc/ope/ope\\_9049-06.pdf](http://www.dtc.org/impNtc/ope/ope_9049-06.pdf); NSCC Important Notice A#6189 (Jan. 19, 2006), available online at <http://www.nssc.com/impnot/notices/notice2006/a6189.pdf>.

<sup>5</sup> PEX will remain a DTC service for other functions not related to buy-ins.

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>16</sup> 17 CFR 200.30-3(a)(12).