

All submissions should refer to File No. SR-Amex-2005-105 and should be submitted on or before May 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

Nancy M. Morris,

Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53727; File No. SR-CBOE-2006-37]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rule 8.4 Relating to Remote Market-Maker Appointments**

April 26, 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 April 12, 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 and II below, which Items have been prepared by the Exchange. 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> 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**

CBOE proposes to amend CBOE Rule 8.4 relating to Remote Market-Maker appointments. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

**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 purpose of this rule change is to amend CBOE Rule 8.4 relating to Remote Market-Maker (“RMM”) appointments. CBOE Rule 8.4 provides that RMMs will have a Virtual Trading Crowd (“VTC”) Appointment, which confers the right to quote electronically in a certain number of products selected from various “Tiers”. There are five Tiers (Tiers A, B, C, D, and E) that are structured according to trading volume statistics, and an “A+” Tier which consists of five option classes—options on Standard & Poor’s Depository Receipts, options on the Nasdaq-100 Index Tracking Stock, options on Diamonds, reduced value options on the Standard & Poor’s 500 Stock Index, and options based on The Dow Jones Industrial Average. CBOE Rule 8.4(d) assigns “appointment costs” to Hybrid 2.0 Classes based on the Tier in which they are located, and an RMM may select for each Exchange membership it owns or leases any combination of products trading on the Hybrid 2.0 Platform whose aggregate “appointment cost” does not exceed 1.0.

CBOE proposes to make the following changes to the Tiers. CBOE proposes to remove from the A+ Tier reduced value options on the Standard & Poor’s 500 Stock Index (XSP). Going forward, XSP options would fall within one of the remaining Tiers A through E depending on its trading volume. As a result of this change, the appointment cost for XSP options would be reduced from .25 to the appointment cost for whichever Tier (A through E) it is assigned.

CBOE also proposes to make two changes to the non-A+ Tiers. First, CBOE proposes to lower the appointment costs for Tiers B, C, D, and

E as follows (the costs for Tiers A and A+ remain the same):

Tiers	Existing appointment cost	New appointment cost
B .....	.0667	.05
C .....	.05	.04
D .....	.04	.02
E .....	.033	.01

CBOE believes that the above new appointment costs for Tiers B, C, D, and E, are more appropriate for each of these four Tiers which would effectively lower an RMM’s cost to access CBOE’s marketplace and receive an appointment in multiple Hybrid 2.0 Classes. Moreover, these revised appointment costs are more competitive with the access costs at other options exchanges to hold an appointment as a market-maker in multiple option classes.

Second, CBOE proposes to amend the composition of the five non-A+ Tiers, in connection with CBOE’s determination to increase the total number of option classes traded on the Hybrid 2.0 Platform from approximately 605 to 905. When CBOE launched its RMM program in March 2005, it initially designated as Hybrid 2.0 Classes the 602 most actively traded, multiply listed option classes. CBOE also advised its members that it may designate additional classes as Hybrid 2.0 Classes as conditions warrant. Increasing the total number of Hybrid 2.0 Classes to 905 would increase competition and liquidity in these option classes by allowing RMMs to have an appointment in them, and would provide RMMs with additional trading opportunities.

As noted above, Tiers A through E are structured according to trading volume statistics, with Tier A consisting of the 20% most actively-traded Hybrid 2.0 Classes over the preceding three calendar months, (excluding “A+” Tier products), Tier B consisting of the next 20% most actively-traded products, etc., through Tier E, which consists of the 20% least actively-traded Hybrid 2.0 Classes. Currently, there are approximately 605 option classes traded on the Hybrid 2.0 Platform. Tiers A through E thus each consist of approximately 120 Hybrid 2.0 Classes.

CBOE proposes to amend the composition of Tiers A through E as follows:

<sup>25</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).

Tiers	Current tier composition	New tier composition
A .....	20% Most Active Hybrid 2.0 Classes (Classes 1–120) .....	Hybrid 2.0 Classes 1–60.
B .....	Next 20% Most Active Hybrid 2.0 Classes (Classes 121–240) .....	Hybrid 2.0 Classes 61–120.
C .....	Next 20% Most Active Hybrid 2.0 Classes (Classes 241–360) .....	Hybrid 2.0 Classes 121–345.
D .....	Next 20% Most Active Hybrid 2.0 Classes (Classes 361–480) .....	Hybrid 2.0 Classes 346–570.
E .....	Next 20% Most Active Hybrid 2.0 Classes (Classes 481–600) .....	All Remaining Hybrid 2.0 Classes. <sup>5</sup>

CBOE believes that these new Tier compositions more accurately reflect the appropriate appointment costs for the classes located in them, based on the average daily trading volume for these classes.

## 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>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,<sup>7</sup> which requires 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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4<sup>9</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for

30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

Under Rule 19b-4(f)(6) of the Act,<sup>10</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date, so that the proposal may take effect upon filing. The proposal lowers the appointment costs for Tiers B, C, D, and E, and changes the composition of the five non-A+ Tiers to reflect the designation of additional Hybrid 2.0 classes. The Exchange believes that the proposed rule change does not raise any new regulatory issues and promotes competition by reducing the access costs of trading in multiple options classes as an RMM. The Commission agrees and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date so that the proposal may take effect upon filing.

## 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-2006-37 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 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-37. 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 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-2006-37 and should be submitted on or before May 24, 2006.

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

Nancy M. Morris,  
Secretary.

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<sup>5</sup> CBOE will publish periodically to its members via Information Circular the total number of option classes traded on the Hybrid 2.0 Platform.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).