

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51371; File No. SR-CBOE-2005-23)

March 15, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated to Amend CBOE Rule 8.4 to Remove the Physical Trading Crowd Appointment Alternative for Remote Market-Makers and to Create an “A+” Tier Consisting of the Two Most Actively-Traded Products on the Exchange

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 March 15, 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 CBOE. 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(d) to remove the Physical Trading Crowd (“PTC”) appointment alternative for Remote Market-Makers (“RMMs”) and to create an “A+” tier consisting of the two most actively-traded products on the Exchange. The text of the proposed rule change is available on the CBOE’s Web site (<http://www.cboe.com>), at the CBOE’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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On March 14, 2005, the Commission approved rules governing the Exchange's RMM Program.³ The RMM Program would allow members and member firms to elect status as an RMM, which would enable them to stream quotes from a location outside of the physical trading station for the subject class. The Exchange's original plans called for the 600 most actively-traded equity option classes to be part of the RMM Program, excluding options on exchange-traded funds. Recently, however, the Exchange has determined to include two of its most actively-traded products in the RMM Program (and, correspondingly, include them on the Hybrid 2.0 Platform), options on Standard & Poor's Depository Receipts ("Spiders") and options on the Nasdaq-100 Index Tracking Stock. The CBOE represents that the purpose of this proposal is to amend the RMM rules relating to appointments in order to accommodate the inclusion of these two products in the RMM Program.

Elimination of Physical Trading Crowd Appointment

CBOE Rule 8.4(d) governs the RMM appointment process and provides that an RMM may choose either a PTC or Virtual Trading Crowd ("VTC") appointment. A PTC Appointment corresponds to the location of a physical trading station on the floor of the CBOE.⁴ The

³ See Securities Exchange Act Release No. 51366.

⁴ An RMM that chooses a PTC appointment would have the right to quote electronically (and not in open outcry) in either 20 or 30 Hybrid 2.0 products traded in that specific trading station for each Exchange membership it leases or owns, respectively.

Exchange proposes to eliminate the PTC appointment option and, as a result, RMMs would be required to have a VTC appointment. CBOE represents that, in its discussions with its members, member organizations, and other potential RMM candidates, it has become evident that there is little if any interest in the ability to have a PTC appointment. The CBOE further represents that a vast majority of potential RMMs have indicated that the ability to choose their own appointments is the attribute of the RMM Program they find most desirable. For this reason, CBOE has determined to eliminate from CBOE Rule 8.4(d) the PTC appointment option.

Creation of an “A+” Tier

The RMM rules incorporate the concept of “tiers” in two instances. First, the VTC appointment process assigns appointment costs to products based on their locations in tiers that have been established based on trading volume. Second, proposed CBOE Rule 8.3A assigns Class Quoting Limits (“CQLs”) based on a product’s trading volume.⁵ The Exchange proposes to create a new tier, the “A+” tier consisting of two products: options on Spiders and options on the Nasdaq-100 Index Tracking Stock. The “appointment cost” for each “A+” tier product would be .60 (6/10ths of a membership) and the CQL would be 40.

The CBOE represents that there are two primary reasons supporting a higher appointment cost for “A+” tier products. First, these two products have trading volumes that substantially exceed the trading volumes of most other Hybrid or Hybrid 2.0 products. The whole “tiering” concept is premised on the fact that the more actively-traded products should cost more in terms

⁵ For example, the 20% most actively-traded products have a CQL of 40 quoters. The tiers for CQLs correspond to the appointment cost tiers contained in CBOE Rule 8.4(d). Accordingly, the 20% most actively-traded products (*i.e.*, the A tier products) would have a CQL of 40 quoters and an appointment cost of .10. Tier A+ products would be excluded when determining the 20% most actively-traded products for Tier A and for CQL purposes. See proposed changes to CBOE Rules 8.4(d) and 8.3A, Interpretation and Policy .01(a), respectively.

of appointment costs. The addition of an “A+” tier is no different in that it operates on the same principle. Second, currently these products trade either by themselves or in a trading crowd with only one other product. In this regard, Spiders options are the only product traded in one trading station, which essentially creates an appointment cost of 1.0. Accordingly, the CBOE believes that assigning a higher appointment cost to these products is justified because they already have higher appointment costs than do other Hybrid 2.0 products.

2. Statutory Basis

CBOE 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.⁶ Specifically, CBOE believes the proposed rule change is consistent with the Section 6(b)(5) of the Act⁷ 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

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 comments.

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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. Please include File Number SR-CBOE-2005-23 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2005-23. 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 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, 450 Fifth Street, NW, 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-2005-23 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).