

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53393; File No. SR-CBOE-2006-18)

March 1, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to Implementation of the PAR Official Program

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 February 17, 2006, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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. On February 24, 2006, CBOE filed Amendment No. 1 to the proposed rule change. On February 28, 2006, CBOE withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change.<sup>3</sup> CBOE has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change 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.

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

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

<sup>3</sup> In Amendment No. 2, CBOE resubmitted Exhibit 1, the Exchange’s draft Notice of Proposed Rule Change, in order to replace a corrupted version of that document submitted with the original filing.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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

The Exchange proposes to amend its rules relating to the implementation of the PAR Official program to extend the deadline for implementation to March 24, 2006. In addition, the Exchange proposes to amend and re-issue regulatory circular RG05-116, DPM Obligations Until the Implementation of the PAR Official Program, to incorporate the revised deadline. The text of the proposed rule change follows, with additions underlined and deletions in [brackets]. The text of the proposed regulatory circular is available at CBOE's Web site (<http://www.cboe.org/legal/default.aspx>), at CBOE's principal office, and at the Commission's Public Reference Room.

**Chicago Board Options Exchange, Incorporated**

**Rules**

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**Rule 7.12. PAR Official**

(a) - (e). No change.

**. . . Interpretations and Policies:**

.01 The Exchange shall assign a PAR Official to all applicable trading stations on or before [February 16] March 24, 2006.

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**Rule 8.85. DPM Obligations**

(a) - (d). No Change.

(e) Requirement to Own Membership. Each DPM organization shall own at least one Exchange membership for each trading location in which the organization serves as a DPM. For

purposes of this Rule, a trading location is defined as any separate identifiable unit of a DPM organization that applies for and is allocated option classes by the appropriate Allocation Committee. An Exchange membership shall include a transferable regular membership or a Chicago Board of Trade full membership that has effectively been exercised pursuant to Article Fifth(b) of the Certificate of Incorporation. The same Exchange membership(s) may not be used to satisfy this ownership requirement for different DPM organizations or different trading locations operated by the same DPM organization.

A DPM organization shall be exempt from the membership requirement under Rule 8.85(e) for the period of November 18, 2005 to [February 16] March 24, 2006 if the DPM organization falls out of compliance with Rule 8.85(e) because the Exchange membership used to satisfy Rule 8.85(e) was, at the time the DPM organization fell out of compliance with Rule 8.85(e), held by an individual whose affiliation with the DPM organization has been terminated as a result of the implementation of Rule 7.12.

**... Interpretations and Policies:**

.01 - .03 No Change.

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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 proposed rule change is to extend the Exchange's deadline for assigning a PAR Official to all applicable trading stations from February 16, 2006 to March 24, 2006.<sup>6</sup> On November 18, 2005 ("approval date"), the Commission approved CBOE's proposal to remove a DPM's obligation to execute orders as an agent, including as a floor broker, in its allocated securities on the Exchange in any trading station and to allow the Exchange to appoint an Exchange employee or independent contractor ("PAR Official") to assume many of the functions and obligations that DPMs previously held ("PAR Official Rule Change").<sup>7</sup>

Among other things, the PAR Official Rule Change gave the Exchange ninety days after the approval date to implement the PAR Official Rule Change or, more specifically, to ensure that a PAR Official was assigned to each DPM trading station. The 90-day implementation period ended on February 16, 2006.<sup>8</sup> In addition, the PAR Official Rule Change exempted DPM organizations for the same period of time from complying with the seat ownership requirement of CBOE Rule 8.85(e) under certain circumstances.<sup>9</sup> Specifically, CBOE Rule 8.85(e) provides, in part, that a DPM organization will be exempt until February 16, 2006 from the requirement to

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<sup>6</sup> See CBOE Rule 7.12, Interpretation and Policy .01.

<sup>7</sup> See Securities Exchange Act Release No. 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005).

<sup>8</sup> See *supra* note 6.

<sup>9</sup> CBOE Rule 8.85(e) provides in part that a DPM organization will be exempt from the seat ownership requirement under Rule 8.85(e) if the DPM organization fell out of compliance because the Exchange membership used to satisfy the requirement was, at the time the DPM organization fell out of compliance, held by an individual whose affiliation with the DPM organization was terminated as a result of the implementation of the PAR Official Rule; Rule 7.12.

own at least one Exchange membership for each trading location that the DPM organization is the appointed DPM.

The Exchange has determined that, primarily due to the lengthy process involved in hiring and properly training a sufficient number of personnel to adequately assume all PAR Official functions, the Exchange will require additional time to assign PAR Officials to each DPM trading station. As such, the Exchange proposes to extend both the PAR Official implementation deadline and the seat ownership exemption deadline to March 24, 2006.

Because the Exchange anticipated that PAR Officials would not be assigned to all DPM trading stations immediately upon the approval of the PAR Official Rule Change, the Exchange issued a regulatory circular that had the effect of subjecting any such DPMs to the same rules and obligations that governed DPM operations and that were eliminated with the approval of the rule change.<sup>10</sup> Concurrent with the filing of this proposed rule change, the Exchange also proposes to reissue the aforementioned regulatory circular, amended to reflect the new March 24, 2006 deadline.

## 2. Statutory Basis

The Exchange believes that, because the proposed rule change will refine and enhance its members' abilities to meet certain regulatory requirements, the proposed rule change is

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<sup>10</sup> See CBOE Regulatory Circular RG05-116, DPM Obligations Until the Implementation of the PAR Official Program, dated November 18, 2005. Immediately upon approval of the PAR Official Rule Change, the Exchange filed the regulatory circular with the Commission pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii), and Rule 19b-4(f)(6) thereunder, 17 CFR 240.19b-4(f)(6). See Securities Exchange Act Release No. 52860 (November 30, 2005), 70 FR 72867 (December 7, 2005) (Notice of filing for immediate effectiveness of SR-CBOE-2005-100). The regulatory circular governed the operations of those DPMs that were not immediately included in the PAR Official conversion as of November 18, 2005, and the rules and obligations set forth therein were adopted directly from the former (that is, the pre-PAR Official Rule Change) DPM rules.

consistent with Section 6(b)<sup>11</sup> of the Act in general, and furthers the objectives of Section 6(b)(5)<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

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

The Exchange 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 with respect to the proposed rule change.

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

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder because it (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time as the Commission may designate.

The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay of Rule 19b-4(f)(6)(iii) so that the proposed rule

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 19b-4(f)(6).

change may become effective immediately. The Commission believes that waiving the pre-filing requirement and the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange's transition to the use of PAR Officials to continue. In addition, this proposed rule change is necessary for those DPMs that continue to operate under the pre-PAR Official program rules. Therefore, the Commission has determined to waive the pre-filing requirement and the operative delay and allow the proposed rule change to become operative immediately.<sup>15</sup>

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, 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 No. SR-CBOE-2006-18 on the subject line.

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<sup>15</sup> For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2006-18. 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-2006-18 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

Nancy M. Morris  
Secretary

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