

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53558; File No. SR-CBOE-2006-28)

March 28, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto To Clarify the Application of Certain Exchange Rules to the Trading of Options on Exchange-Traded Fund Shares

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 March 16, 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, II, and III below, which Items have been prepared by the Exchange. On March 27, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</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

The Exchange proposes to make amendments to clarify the application of certain Exchange rules to the trading of options on exchange-traded fund (“ETF”) shares.

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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. 1, the Exchange made minor clarifying and technical changes to the proposed rule change.

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

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

The text of the proposed rule change, as amended, is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange'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 proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently trades, among other things, options on ETFs. In conjunction with a recent review of Exchange rules, this filing proposes to make amendments to clarify the application of certain Exchange rules to the trading of ETF options.

First, this filing proposes to make certain clarifying changes to CBOE Rule 6.3. CBOE Rule 6.3 pertains to trading halts and provides generally that Exchange Floor Officials may halt trading in any security in the interests of maintaining a fair and orderly market. Though the rule has general applicability to all securities traded on the Exchange and authorizes trading halts in any such security, certain of the factors identified in the rule that may be considered in making a decision to halt trading vary depending on the particular type of Exchange traded security while other factors apply generally to all securities.

For example, the rule currently references factors for considering halts in the case of (i) a stock option, (ii) any security other than an option, and (iii) an index warrant or an index UIT interest and also references general, non-security type specific factors pertaining to rotations and

unusual conditions or circumstances.<sup>6</sup> The rule is being amended to change the references in the list of factors from particular types of securities (such as “stock options”) to more general references (such as “an option on a security”).

Additionally, the Exchange is proposing to add similar clarifying language in Interpretation .04 of CBOE Rule 6.3, which addresses trading halts on the Exchange when a regulatory halt in an underlying stock has been declared in the primary market (a “regulatory halt”). Since such regulatory halts may be declared for securities other than stock options, such as ETF options, Interpretation .04 is being amended to clarify that, in general, a halt on the Exchange can be made when there is a regulatory halt in the underlying security. This revision makes clear Interpretation .04’s applicability to stock options, ETF options, and any other such options for which there is an underlying security.

Second, this filing proposes to amend CBOE Rule 7.4, which rule pertains to certain obligations of Order Book Officials (“OBOs”). Specifically, CBOE Rule 7.4(a)(2) describes what types of orders shall ordinarily be accepted by an OBO and certain OBO responsibilities pertaining to the processing of orders that are submitted through the Intermarket Options Linkage (“Linkage Orders”). This current rule states that for those index option classes on the

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<sup>6</sup> The existing rule text provides that “[a]mong the factors that may be considered in making [a determination to halt trading] are whether: (i) in the case of a stock option, trading in the underlying security has been halted or suspended in the primary market, (ii) in the case of a stock option, the opening of such underlying security has been delayed because of unusual circumstances, (iii) in the case of any security other than an option, (A) the opening of such security has been delayed due to order imbalances, (B) the Exchange has been advised that the issuer of the security is about to make an important announcement affecting such issue, or (C) trading in such security has been halted or suspended in the primary market for such security. (iv) in the case of an index warrant or an index UIT interest, trading in index options has been halted pursuant to the provisions of Rule 24.7, (v) the extent to which the rotation has been completed or other factors regarding the status of the rotation, or (vi) other unusual conditions or circumstances are present.” CBOE Rule 6.3(a).

Exchange's Hybrid Trading System ("Hybrid") that are not assigned a Designated Primary Market-Maker ("DPM"), the OBO shall be responsible for (i) routing Principal Acting as Agent (P/A) orders and Satisfaction orders to other markets based on prior written instructions that must be provided by the Lead Market-Maker ("LMM") to the OBO and (ii) handling all Linkage Orders or portions of Linkage Orders received by the Exchange that are not automatically executed.

The Exchange currently has some options on ETFs that are not assigned to a DPM and that trade on Hybrid. One example is the DIAMOND (DIA) options. The intent of CBOE Rule 7.4 has always been that the responsibilities of the OBO is not only for index options classes on Hybrid that are not assigned a DPM but also for ETF options classes on Hybrid that are not assigned a DPM. However, the rule is currently unclear in making this point. For this reason, the Exchange is proposing that in CBOE Rule 7.4(a)(2), "ETF options" be added to the rule's current language to clarify that an OBO's responsibilities pertaining to the process of Linkage Orders applies for both (i) index options classes and (ii) ETF option classes, that are on Hybrid and that are not assigned a DPM.

Third, this filing proposes to amend CBOE Rule 8.15, which governs the LMM and Supplemental Market-Maker ("SMM") appointment process in non-Hybrid classes, to make the list of factors considered in selecting LMMs and SMMs consistent with the language in the Exchange rule governing LMM appointments in Hybrid classes. Specifically, the current factors in CBOE Rule 8.15(a)(1) that are considered in selecting LMMs and SMMs in non-Hybrid classes include: adequacy of capital, experience in trading index options, presence in the trading crowd, adherence to Exchange rules and ability to meet certain other obligations.

Similarly, current CBOE Rule 8.15A governs the factors that are considered in selecting LMMs in Hybrid classes.<sup>7</sup> The current factors in CBOE Rule 8.15A(a)(1) include: adequacy of capital, experience in trading index options or options on ETFs, presence in the trading crowd, adherence to Exchange rules and ability to meet certain other obligations. The factors used in selecting LMMs and SMMs for both Hybrid and non-Hybrid classes are the same except for the additional factor of experience in trading options on ETFs for Hybrid classes.

This filing proposes to amend CBOE Rule 8.15 to add experience in trading “options on ETFs” as an additional factor used in selecting LMMs and SMMs in non-hybrid classes. Currently, options on ETFs are traded on both Hybrid and non-Hybrid classes. For this reason, the Exchange is proposing to make CBOE Rule 8.15 consistent with the factors used in CBOE Rule 8.15A.

## 2. Statutory Basis

By proposing to make certain amendments to clarify the application of certain Exchange Rules as they pertain to the trading of options on ETF shares, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

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<sup>7</sup> SMMs do not exist in Hybrid.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

This proposed rule change does not 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

Because the foregoing proposed rule change, as amended, does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 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; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</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.<sup>12</sup>

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange satisfied the pre-filing five-day notice requirement.

<sup>12</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of

#### 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-2006-28 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-2006-28. 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 Exchange. All comments received will be posted without change; the Commission does not edit

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the Act, the Commission considers the period to commence on March 27, 2006, the date on which the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2006-28 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.<sup>13</sup>

Nancy M. Morris  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).