

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-52019; File No. SR-CBOE-2005-53)**

**July 12, 2005**

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated;  
Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit a  
Limited Suspension of Exchange Membership Transactions to Allow for the  
Dissemination of Information Deemed Material to the Value of Exchange  
Memberships**

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 July 8, 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 and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The Exchange proposes to amend Exchange Rule 3.14 – Sale and Transfer of Membership, to permit the Exchange to suspend membership purchase and sale transactions for a limited period of time to allow for the dissemination of information deemed to be material to the value of Exchange memberships. Below is the text of the proposed rule change. Proposed new language is italicized.

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**RULE 3.14 - Sale and Transfer of Membership**

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

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

(a) - (d) Unchanged.

**... Interpretations and Policies:**

**.01** In circumstances in which the Board of Directors deems it necessary in the interest of maintaining a fair and orderly market in transferable Exchange memberships, the Board may declare a suspension of membership purchase and sale transactions to allow for the dissemination of information deemed to be material to the value of Exchange memberships. Any such suspension shall be limited in duration to no longer than one business day. During any such suspension, any bid or offer previously submitted to the Membership Department in accordance with Rule 3.13(b) or Rule 3.14(a) may be withdrawn by the submission to the Membership Department of a written revocation of the bid or offer. No new bids or offers may be submitted during any such suspension.

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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 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 these statements may be examined at the places specified in Item IV below. The CBOE 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 the proposed rule change is to allow for the temporary suspension of Exchange membership purchase and sale transactions in the interest of maintaining a fair

and orderly market in transferable Exchange memberships. Specifically, the proposal would permit the Board of Directors to suspend membership transactions for a limited period of time to allow for the dissemination of information deemed to be material to the value of Exchange memberships. During a temporary suspension, any bid or offer to purchase or sell a membership previously submitted to the Exchange's Membership Department would be permitted to be withdrawn through the submission of a written revocation of the bid or offer. No new bids or offers would be permitted to be submitted during a suspension. In addition, the proposed rule provides that no suspension would be permitted to last more than one business day.

Currently, the Exchange has no rule in place specifically authorizing the Exchange to temporarily suspend membership transactions. The Exchange believes that having such a rule would provide CBOE with the ability to allow for material information relating to the value of Exchange memberships to be disseminated and absorbed by members before additional seat transactions may be consummated. This would permit the Exchange to ensure that members engaging in seat transactions have an adequate opportunity to learn of the information so that they are not at an informational disadvantage and have time to reassess their current bids and offers in light of the new material information. Having such a rule would assist the Exchange in maintaining a fair and orderly market in CBOE memberships. The Exchange believes one business day is a sufficient amount of time to allow the seat market to absorb any disseminated material information.

## 2. Statutory Basis

The Exchange believes that having the ability to declare a temporary suspension of membership transactions would serve to promote a fair and orderly market for its

memberships. For this reason, 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)<sup>3</sup> of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5)<sup>4</sup> 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.

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) of the Act<sup>5</sup> and subparagraph (f)(6) of Rule 19b-4<sup>6</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

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<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

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)(iii) of the Act,<sup>7</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 the Commission to waive to 30-day operative delay. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date because such waiver will permit the Exchange to implement the rule without undue delay.<sup>8</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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

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<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>8</sup> For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- 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-2005-53 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-53. 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-2005-53 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>9</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).