

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52698; File No. SR-CBOE-2005-78)

October 28, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Fee Waiver for Certain Transactions in SPX LEAPS[®] Options

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 September 26, 2005, the Chicago Board Options Exchange, Incorporated (“CBOE” or the “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 the Exchange. CBOE has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by CBOE pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 its Fees Schedule to waive fees through December 15, 2005 for certain transactions in S&P 500 index options LEAPS[®].⁵ The text of the proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Index LEAPS are long-term index option series that can expire up to 60 months from the date of issuance. See CBOE Rule 24.9(b).

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 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 Exchange proposes to amend its Fees Schedule to waive fees for certain transactions in S&P 500 index ("SPX") options LEAPS through December 15, 2005, which is the last day of trading in the December 2005 SPX options series. Specifically, the Exchange will waive all trading related fees (transaction, floor brokerage, and OBO fees) for transactions in which a market participant closes a position in reduced-value SPX LEAPS ("RV SPX LEAPS") and simultaneously opens a corresponding position in full-value SPX LEAPS ("FV SPX LEAPS").⁶

The fee waiver would apply only to trades that close positions in RV SPX LEAPS and simultaneously open corresponding positions in FV SPX LEAPS. The fee waiver would apply

⁶ Pursuant to CBOE Rule 24.9(b), the Exchange may list LEAPS based on the full and the reduced value of the underlying index.

on a 10-for-1 basis only.⁷ For example, if a market participant closes 100 contracts of the December 2006 120 strike RV SPX LEAPS and opens a 10 contract position in the December 2006 1200 strike FV SPX LEAPS, all trading related fees would be waived for all contracts in both transactions. However, if a market participant closes 100 contracts of the December 2006 120 strike RV SPX LEAPS and opens a 100 contract position in the December 2006 1200 strike FV SPX LEAPS, fees would be waived for all of the RV SPX LEAPS contracts but only for 10 contracts of the FV SPX LEAPS transaction. All standard fees would apply to the remaining 90 contracts of the FV SPX LEAPS transaction.

The purpose of the proposed fee waiver is to encourage rollover of open interest in currently listed RV SPX LEAPS series into FV SPX LEAPS series, in order to facilitate the listing of series in options on the Mini-SPX (“XSP”).⁸ Currently, the Exchange lists December 2006 and December 2007 series in both the RV SPX LEAPS and the FV SPX LEAPS. After December 2005 expiration, the Exchange will list the XSP December 2006 series and after December 2006 expiration, the Exchange will list the XSP December 2007 series. Since XSP options, like RV SPX LEAPS, are also based on 1/10th the value of the S&P 500 Index, the Exchange intends to move any open interest in December 2006 and 2007 RV SPX LEAPS into December 2006 and 2007 XSP series, respectively, once those XSP series have been listed, in order to avoid having open at the same time two “reduced-value SPX” products.⁹ The purpose of the proposed fee waiver is to

⁷ The RV SPX LEAPS are 1/10th the size of the FV SPX LEAPS.

⁸ The Exchange has announced that it intends to list XSP options in late October 2005.

⁹ The Commission notes that the rollover of RV SPX LEAPS into XSP options is not the subject of this proposed rule change.

encourage as much open interest as possible to move from the RV SPX LEAPS into the FV SPX LEAPS before the Exchange moves any remaining open interest in RV SPX LEAPS into the XSP.

Market participants who effect transactions that qualify for the fee waiver will receive a rebate of trade related fees (transaction, floor brokerage, and OBO fees) incurred by the transactions.¹⁰ The rebate will be processed as a credit on billing statements produced at each month-end.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹² in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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 that is not necessary or appropriate in furtherance of 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.

¹⁰ The Exchange has represented that the waiver will be accomplished through a rebate to market participants, rather than a traditional waiver, for processing and administrative reasons, but that the effect of the rebate will be the same as if the fees were initially waived. Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE and Deborah Flynn, Assistant Director, and Sara Gillis, Attorney, Division of Market Regulation, Commission, on October 12, 2005.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and Rule 19b-4(f)(2) thereunder,¹⁴ because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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.

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-2005-78 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-2005-78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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 the 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 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-2005-78 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.¹⁵

Jonathan G. Katz
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).