

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52824; File No. SR-CBOE-2005-69)

November 22, 2005

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 Delete Certain Exchange Rules, or Portions Thereof, Which Have Been Determined by the Exchange to be Obsolete or Unnecessary

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 1, 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 the CBOE. On November 8, 2005, the Exchange filed Amendment No. 1 to the proposal.³ The Exchange filed the proposed rule change, as amended, as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act,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, as amended, from interested persons.

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

The CBOE proposes to delete certain rules, or portions thereof, which have been determined by the Exchange to be obsolete or unnecessary. The text of the proposed rule change is available on Exchange’s Web site (www.cboe.com), at the CBOE’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated November 8, 2005, which replaced the original filing in its entirety (“Amendment No. 1”).

⁴ 17 CFR 240.19b-4(f)(6).

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, Proposed Rule Change

1. Purpose

The Exchange proposes to delete the rules, or portions thereof, that pertain to the former Joint Venture Participation Agreement (“Agreement”) between CBOE and the Chicago Board of Trade (“CBOT”). The Exchange represents that the Agreement, among other things, provided that CBOE would waive certain dues and fees for CBOT Exercise members who made no trades in CBOE contracts in a given quarter. In addition, the Agreement waived all membership application fees and technology fees for CBOT Exercise members. The Exchange represents that the Agreement terminated on December 29, 1998, and the Exchange has no intention of initiating this program in the future. On December 10, 1998, CBOE issued Regulatory Circular RG98-140 to its members informing them that the Agreement would terminate effective December 29, 1998 and that the Agreement would not be renewed. In addition, the Commission issued Securities Exchange Act Release No. 40973, which pertained to the termination of the Agreement and the initiation of fees that would ultimately be charged to the CBOT Exercise

members pursuant to the termination of the Agreement.⁵ The proposed CBOE rules that pertain to the obsolete Agreement, or the portions thereof, that are to be deleted are: CBOE Rule 1.1, Rule 6.7, Rule 6.20, Rule 6.70, Rule 9.1, Rule 19.1, and Rule 30.12.

Also, the Exchange proposes to delete the rules, or portions thereof, that pertain to Board Brokers. A Board Broker is an individual member, a nominee of a member organization or a member organization who or which is registered with the Exchange for the purposes of (i) acting as a "broker's broker" for specified classes of options, at the post at which such classes of options are traded, by accepting and attempting to execute orders placed with him by other members, and (ii) monitoring the market for such classes of options at the post. The Exchange represents that it has not used Board Brokers for approximately 22 years, and does not intend to use them in the future. The proposed CBOE rules pertaining to Board Brokers, or the portions thereof, that are to be deleted are: CBOE Rule 6.43, Rule 6.46, Rule 6.47, Rule 6.54, Rule 6.70, Rule 7.1, Rule 7.2, Rule 7.3, Rule 7.4, Rule 7.5, Rule 7.7, Rule 7.8, Rule 7.9, Rule 7.10, and Rule 7.11.

In addition to the deletions of the above-referenced "Joint Venture" and "Board Broker" rules, or portions thereof, the Exchange proposes to delete each of the following rules, or portions thereof:

- CBOE Rule 2.21 – This rule allows the Exchange to impose a charge upon Exchange members measured by their respective net commissions. The Exchange represents that Exchange members have not assessed the commissions that such charges are measured by since the early 1970s, and such commissions will not be assessed by Exchange members in the future. For this reason, the Exchange has not imposed and will not

⁵ Securities Exchange Act Release No. 40973 (January 25, 1999), 64 FR 4915 (February 1, 1999) (SR-CBOE-98-55).

impose such charges upon its members, since there is no commission to base it upon, therefore making this rule obsolete and unnecessary.

- CBOE Rule 2.25 and CBOE Rule 2.30 – These rules allow the Exchange to assess fees for the delayed submission of trade information. Specifically, these rules allow the Exchange to assess fees to members who failed to submit trade information for at least 80% of all of that member’s transactions. Currently, over 98% of all trade information is disseminated within one hour after the time of execution. The Exchange represents that it no longer assesses such fees, since 98% of all trade information is disseminated within one hour after the time of execution, and does not intend to assess them in the future.
- CBOE Rule 14.2, CBOE Rule 14.3, and CBOE Rule 14.5 – The rules in Chapter 14 of the CBOE rulebook were created for the purpose of charging and collecting commissions. Specifically, CBOE Rule 14.1 made it mandatory for commissions to be charged and collected upon the execution of all orders, for the accounts of members and non-members, of securities dealt on CBOE. CBOE Rule 14.1 stated that the commissions would be no less than the rates established by CBOE and such commissions shall be “net and free from any rebate, return, discount or allowance.” The Exchange represents that CBOE Rule 14.1 was deleted from CBOE’s rules on May 15, 1975, since such fixed commissions would no longer be charged and would not be charged in the future.

For this reason, at this time, the Exchange proposes to delete CBOE Rules 14.2, 14.3, and 14.5, since the Exchange believes that there is no need for these rules since they pertained specifically to the commissions discussed in CBOE Rule 14.1 and which are no longer necessary.

Specifically, CBOE Rule 14.2 involves reciprocal arrangements. The Exchange states that reciprocal arrangements were agreements that brokers used with other brokers to permit such brokers to participate in the commissions that were generated from the execution of orders. The Exchange represents that reciprocal arrangements have not been used since the early 1970s. Specifically, CBOE Rule 14.2(a) states that any such arrangement had to be reported to CBOE and subject to CBOE's approval. CBOE Rule 14.2(b) states that no member, in consideration of the receipt of business, shall make any payments, or give up any work or give up any part of any commission to which such member is or will be entitled. Since such arrangements as described in CBOE Rule 14.2(b) were never permitted, the Exchange would not approve such arrangements pursuant to CBOE Rule 14.2(a), if and when an Exchange member reported such an arrangement to the Exchange. Further, since the commissions as discussed in CBOE Rule 14.1 are no longer charged, and have not been charged since the early 1970s, the Exchange believes that there is no need to have a rule pertaining to reciprocal arrangements, since the commissions that the arrangements were based on are no longer charged and will not be charged in the future. Specifically, CBOE Rule 14.2 prohibited those arrangements that were used to circumvent the commissions referred to in CBOE Rule 14.1, and therefore, since CBOE Rule 14.1 was deleted on May 15, 1975, there is no need for CBOE Rule 14.2.

CBOE Rule 14.3 deals with commissions charged on non-member orders. This rule specifically sets forth that the commissions to be charged on non-member orders shall be mutually agreed upon. Again, the Exchange represents that this rule is obsolete, since the commissions that this rule pertains to are no longer charged and have not been

charged since the early 1970s. Therefore, the Exchange believes that there is no need for this rule.

CBOE Rule 14.5 deals with intra-member rates for floor brokerage. This rule states that for those orders that are executed when a principal is given up, the commission shall be mutually agreed upon. As with CBOE Rule 14.3, the Exchange believes that this rule is obsolete, since the commissions that this rule pertains to have not been charged since the early 1970s and the Exchange does not plan to charge such commissions in the future. For this reason, the Exchange believes that there is no need for this rule.

- CBOE Rule 15.4 – This rule pertains to a monthly commission report that the Exchange required certain individual members and member organizations to submit to the Treasurer of the Exchange. Specifically, this rule required certain members to disclose commissions on business done on the Exchange for each month. The Exchange believes that this rule is obsolete, since such a report is no longer necessary given that such commissions are no longer charged and collected.

2. Statutory Basis

By deleting certain Exchange rules, or portions thereof, which have been determined to be obsolete or unnecessary, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ 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 national market system, and, in general, protect investors and the public interest.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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

The 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

Written comments on the proposed rule change were neither solicited nor received.

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

Because the proposed rule change, as amended: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹ As required under Rule 19b-4(f)(6)(iii),¹⁰ the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

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 the furtherance of the purposes of the Act.¹¹

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ The effective date of Amendment No. 1 is November 8, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on November 8, 2005, the date on which the Exchange submitted Amendment No. 1.

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. Please include File Number SR-CBOE-2005-69 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 20549-9309.

All submissions should refer to File Number SR-CBOE-2005-69. 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. 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-2005-69 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.¹²

Jonathan G. Katz
Secretary

¹² 17 CFR 200.30-3(a)(12).