

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-52872; File No. SR-CBOE-2005-92)

December 1, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to Prohibit the Practice of Unbundling Orders to Maximize Rebates of Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 7, 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 Exchange. 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 adopt a new rule to prohibit the practice of unbundling orders in order to maximize rebates of fees. The text of the proposed rule change appears below. Additions are underlined.

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Rule 4.23 – Unbundling of Orders to Maximize Rebates of Fees

Rule 4.23. No member shall divide an order into multiple smaller orders for the primary purpose of maximizing rebates of fees resulting from the execution of such orders, or any other similar payment of value to the member.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240. 19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend CBOE rules to expressly prohibit the practice of tape shredding, *i.e.*, the practice of splitting large orders into multiple smaller orders for the purpose of maximizing market data revenues. The Commission has requested that all U.S. self-regulatory organizations implement rule changes to inhibit the practice of tape shredding.

CBOE agrees that the practice of “tape shredding” is a distortive practice. For options trading, CBOE’s members do not have any incentive to engage in this practice because CBOE does not share its market data revenue in options with its members. With regard to its limited stock trading, until very recently CBOE did not share market data revenue with its members.³ Nonetheless, because CBOE shares the Commission’s concerns about this dubious practice, CBOE agrees that it would be appropriate for CBOE to amend its rules to expressly prohibit its

³ CBOE recently adopted a revenue sharing program with its Designated Primary Market-Makers and Market-Makers for trades in Tape B securities, of which CBOE trades a very small number, upon the launch of CBOE’s new stock trading platform. Because CBOE’s revenue sharing plan does not propose to share revenue with order flow providers, only with CBOE’s DPMs and Market-Makers in these Tape B securities, CBOE does not believe that its plan promotes the breaking up of single orders into multiple orders to maximize market data rebates.

members from dividing single orders into multiple orders for the sole purpose of maximizing market data rebates.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

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

The Exchange believes that the proposed rule change will impose no 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

The Exchange has neither solicited nor received comments on this proposal.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2005-92 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2005-92. 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 offices of 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-2005-92 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.⁶

Jonathan G. Katz
Secretary

⁶ 17 CFR 200.30-3(a)(12).