

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53088; File No. SR-CBOE-2005-92]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change To Prohibit the Practice of Unbundling Orders To Maximize Rebates of Fees

January 10, 2006.

#### I. Introduction

On November 7, 2005, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) 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> a proposed rule change to prohibit the practice of unbundling orders to maximize rebates of fees. The proposed rule change was published for notice and comment in the **Federal Register** on December 8, 2005. <sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

CBOE proposed to adopt a new rule to expressly prohibit its members from dividing single orders into multiple orders for the sole purpose of maximizing market data rebates.

#### III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, <sup>4</sup> particularly section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. <sup>5</sup> The Commission believes that the proposed

rule change should help eliminate the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, <sup>6</sup> that the proposed rule change (File No. SR-CBOE-2005-92), be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. <sup>7</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53072; File No. SR-CBOE-2006-02]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rule 8.4 Relating to Remote Market-Maker Appointments

January 6, 2006.

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 January 5, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act <sup>3</sup> and Rule 19b-4(f)(6) thereunder, <sup>4</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 from interested persons.

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

The CBOE proposes to amend CBOE Rule 8.4 relating to Remote Market-Maker appointments. Below is the text of the proposed rule change. Proposed

new language is italicized; proposed deletions are in [brackets].

\* \* \* \* \*

#### Rule 8.4—Remote Market-Makers

Rule 8.4. (a) No Change.

(b) No change.

(c) No change.

(d) Appointment of RMMs: An RMM will have a Virtual Trading Crowd (“VTC”) Appointment, which confers the right to quote electronically (and not in open outcry) an appropriate number of products selected from “tiers” that have been structured according to trading volume statistics. Of the products included in the Hybrid 2.0 Platform, Tier A will consist of the 20% most actively-traded products over the preceding three calendar months, excluding “A+” tier products, Tier B will consist of the next 20% most actively-traded products, etc., through Tier E, which will consist of the 20% least actively-traded products. Tier “A+” will consist of options on Standard & Poor’s Depository Receipts, options on the Nasdaq-100 Index Tracking Stock, options on Diamonds, [and] reduced value options on the Standard & Poor’s 500 Stock Index, *and options based on The Dow Jones Industrial Average.*

\* \* \* \* \*

#### 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 purpose of this rule change is to amend CBOE Rule 8.4 relating to Remote Market-Maker (“RMM”) appointments. CBOE Rule 8.4 provides that RMMs will have a Virtual Trading Crowd (“VTC”) Appointment, which confers the right to quote electronically in a certain number of products selected from various “tiers”. There are five tiers that are structured according to trading volume statistics and an “A+” Tier

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

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

<sup>3</sup> See Securities Exchange Act Release No. 52872 (December 1, 2005), 70 FR 73043.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

which consists of four option classes—options on Standard & Poor's Depository Receipts, options on the Nasdaq-100 Index Tracking Stock, options on Diamonds, and reduced value options on the Standard & Poor's 500 Stock Index.

CBOE proposes to amend CBOE Rule 8.4(d) relating to the "A+" Tier to include an additional option class in the "A+" Tier, namely options based on The Dow Jones Industrial Average ("DJX"). CBOE believes it is appropriate to include this option class in this tier based on its trading volume.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 does not believe that the proposed rule change will 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

The Exchange neither solicited nor received comments on the proposal.

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

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder<sup>8</sup> because it 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 filing date of the proposal or such shorter time as designated by the Commission.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five days pre-filing requirement and waive the 30-day pre-operative period, which would make the rule change operative immediately. The Commission believes that waiving the five day pre-filing requirement and waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>12</sup> The proposed change to the "A+" Tier that is described in this proposed rule change does not raise any new, unique, or substantive issues from those raised in previous filings with the Commission.<sup>13</sup> Accordingly, the Commission designates that the proposal become operative immediately.

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.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

<sup>9</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposal.

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> *Id.*

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> See Securities Exchange Act Release Nos. 51543 (April 14, 2005), 70 FR 20952 (April 22, 2005) (File No. SR-CBOE-2005-23) (establishing the "A+" Tier); 52398 (September 8, 2005), 70 FR 54597 (September 15, 2005) (File No. SR-CBOE-2005-74) (adding options on Diamonds to the "A+" Tier); and 52624 (October 18, 2005), 70 FR 61480 (October 24, 2005) (File No. SR-CBOE-2005-79) (adding reduced value options on the Standard & Poor's 500 Stock Index to the "A+" Tier).

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2006-02 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-CBOE-2006-02. 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-2006-02 and should be submitted on or before February 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Nancy M. Morris,**

*Secretary.*

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).