Paper Comments

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

All submissions should refer to File Number SR–CBOE–2005–117. 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 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–2005–117 and should be submitted on or before February 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1162 Filed 1–30–06; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53175; File No. SR–CBOE–2005–101]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Membership Rules

January 25, 2006.

I. Introduction

On November 29, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to modify CBOE Rule 3.9, relating to investigation of membership applicants.

The proposed rule change was published in the **Federal Register** on December 22, 2005.[3] The Commission received no comments on the proposed rule change. On January 23, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, as amended by Amendment No 1.

II. Description

The Exchange is proposing to amend CBOE Rule 3.9 (''Application Procedures and Approval or Disapproval'') subsection (f), which currently requires CBOE's Membership Department to investigate each applicant applying to be a member organization, each associated person required to be approved by the Membership Committee pursuant to CBOE Rule 3.6(b), and each applicant applying to be an individual member (collectively ''Membership Applicants''). As part of the current application process, Membership Applicants are required to submit fingerprints to the Exchange,[5] which CBOE then forwards to the Federal Bureau of Investigation.

The Exchange currently requires Membership Applicants to submit new fingerprints to the Exchange for processing, as part of the investigation process pursuant to CBOE Rule 3.9(f), even if the Membership Applicant was recently fingerprinted at the Exchange or another SRO. The proposed rule change would change this requirement to permit the Exchange to accept the results of a fingerprint-based criminal records check of the Membership Applicant conducted by the Exchange or another SRO within the prior year pursuant to that investigation process.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52952 (December 14, 2005), 70 FR 76087.

[4] In Amendment No. 1, the Exchange proposed an additional modification to CBOE Rule 3.9(f). Specifically, the Exchange proposed a change so that, as amended, the proposed rule would permit the Exchange to rely on the results of a fingerprint-based criminal records check of an applicant conducted by the Exchange itself, in addition to a check conducted by another self-regulatory organization (''SRO''), within the prior year. Amendment No. 1 is a technical amendment and therefore not subject to notice and comment.

[5] *See* CBOE Rule 3.7(c).

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

In approving this proposed rule change, the Commission notes that as part of the application process, in addition to a fingerprint-based criminal records check, CBOE requires that a Membership Applicant also submit a Form U–4 (Uniform Application for Securities Industry Registration or Transfer). Form U–4 requires disclosure of events that would constitute a statutory disqualification under the Act. Because the Exchange obtains this information as part of the application process, and because CBOE Rule 3.9(d) requires Membership Applicants to promptly update membership application materials if the information provided in the materials becomes inaccurate or incomplete after the date of submission, the Commission believes that it is reasonable for the Exchange to expect that its Membership Department would have access to information that would reveal whether a Membership Applicant became subject to a statutory disqualification subsequent to the date of the results of a fingerprint-based criminal records check conducted either by the Exchange or by another SRO on which CBOE would be relying.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2005–101) is approved, as amended.

[6] 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).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1163 Filed 1–30–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53172; File No. SR–CBOE–2006–07]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Dividend, Merger, and Short Stock Interest Spread Fee Cap Program

January 24, 2006.

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 January 13, 2006, 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 CBOE. CBOE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act [3] 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, as amended, 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 amend the definitions of dividend, merger and short stock interest spreads for purposes of the Exchange's strategy fee cap program.

The text of the proposed rule change is available on CBOE's Web site at *http://www.cboe.com,* at the Office of the Secretary at CBOE, 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 proposal. 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 currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend spread, merger spread and short stock interest spread transactions (''Strategy Fee Cap''). The definition of each strategy is set forth on the CBOE Fees Schedule.[5] The Strategy Fee Cap is in effect as a pilot program that is due to expire on March 1, 2006.

The Exchange proposes to amend the definitions of dividend, merger and short stock interest spreads for purposes of the Strategy Fee Cap program, in order to add clarity and to make the definitions more consistent with each other.

First, the Exchange proposes to amend the definitions of dividend, merger, and short stock interest spreads in order to clarify that transactions done to achieve a dividend, merger or short stock interest arbitrage do not necessarily need to be ''spreads'' in order to qualify for the Strategy Fee Cap. According to the market participants (generally professionals) that engage in these strategies, each of these strategies can be achieved either by purchasing and selling the same option series or different options series. Accordingly, as explained in further detail below, the Exchange proposes to revise each definition to refer to each strategy as a ''strategy'' instead of as a ''spread'' and to change each definition in certain respects to make clear that transactions done to achieve a dividend, merger, or short stock interest arbitrage that involve only one options series may also qualify for the Strategy Fee Cap.

Second, the Exchange is also proposing changes to the definition of each strategy to better reflect the similarities between the strategies. Dividend, merger, and short stock interest strategies are strategies that have similar economic risks and are executed in similar ways. As explained in more detail below, each proposed definition will be clarified to reflect that each strategy involves the ''purchase, sale and exercise'' of options. Each proposed definition will also be clarified to reflect that the options involved must be of the ''same class''.

The Exchange defines a dividend spread for purposes of the Strategy Fee Cap as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options. The Exchange proposes to change ''dividend spread'' to ''dividend strategy'', and proposes to define a dividend strategy as ''transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.'' The word ''two'' is not included in the new definition so that transactions involving only a single options series that are done to achieve a dividend arbitrage may also qualify for the Strategy Fee Cap. The word ''deep'' is also not included in the new definition because the options used do not necessarily need to be deep-in-the-money options and also because of the difficulty in defining what constitutes ''deep'' in-the-money. The definition is clarified by making explicit two requirements: the options must be of the same class and the transactions must be effected prior to the date on which the underlying stock goes ex-dividend.

The Exchange defines a merger spread for purposes of the Strategy Fee Cap as a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock. The Exchange proposes to change ''merger spread'' to ''merger strategy'', and proposes to define a merger strategy as ''transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.'' The proposed definition does not include the words ''but with different strike prices'' so that transactions involving only a single options series that are done to achieve

[9] 17 CFR 200.30–3(a)(12).

[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] *See* CBOE Fees Schedule, fn. 13.