

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: February 24, 2005.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 05-3995 Filed 2-25-05; 11:34 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51234; File No. SR-CBOE-2004-58]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Market-Maker Quoting and Market-Maker Appointments

February 22, 2005.

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 August 19, 2004, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in items I, II, and III below, which items have been prepared by CBOE. On February 2, 2005, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 17, 2005, CBOE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> 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 existing rules and adopt new rules governing quoting by Market-Makers (“Market-Makers” or “MM”).

The text of the proposed rule change, as amended, is available on the CBOE’s Web site (<http://www.cboe.com>), at the

CBOE’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

On July 12, 2004, the Commission approved a CBOE proposal to add a new category of market-making participant called “e-DPMs,” who function as remote competing specialists in their allocated securities. By contrast, regular Designated Primary Market-Makers (“DPMs”) and Market Makers (“MMs”) on CBOE are required to operate from within their appointed trading station. The ability to stream quotes electronically from remote locations (*i.e.*, outside of the individual’s appointed trading station) is an option the Exchange believes would enhance the competitiveness of its MMs.<sup>5</sup> Accordingly, the Exchange proposes to grant its MMs the ability to stream quotes from locations other than their appointed trading stations.<sup>6</sup> As such, the Exchange proposes to amend its rules governing the MM appointment process (CBOE Rule 8.3), and MM obligations (CBOE Rule 8.7), and to adopt new CBOE Rule 8.3A to establish an upper limit on the number of members that may quote electronically in a given product.

<sup>5</sup> For example, rather than “calling in sick” to work and thereby relinquishing the ability to quote altogether, a MM would be able to stream quotes from his/her home office. CBOE believes that allowing the MM to continue to quote increases liquidity available in the class, thereby enhancing the competitiveness of the Exchange.

<sup>6</sup> This rule filing only allows current MMs to quote remotely (*i.e.*, from outside of their appointed trading stations). File No. SR-CBOE-2004-75 establishes rules for Remote Market-Makers. See Securities Exchange Act Release No. 51107 (January 31, 2005), 70 FR 6051 (February 4, 2005) (“RMM filing”).

#### CBOE Rule 8.1 Market-Maker Defined

The Exchange proposes to amend the definition of MM to remove the requirement that transactions be effected on the floor of the Exchange. As amended, transactions effected in accordance with CBOE Rule 8.7.03 would count as MM transactions.

#### CBOE Rule 8.3 Appointment of Market-Makers

Currently, a MM’s appointment consists of all classes traded at a particular station, regardless of the number of classes actually trading at that station and regardless of whether the MM owns or leases a membership. In addition, CBOE Rule 8.3(c) currently provides that MMs may have appointments in up to ten trading stations on the floor. The Exchange proposes to amend these requirements in several respects.

First, as proposed, a MM’s appointment would confer the right to quote electronically in all classes traded on the Hybrid Trading System that are located in one designated trading station (“appointed trading station”) and it would confer the right to quote in open outcry all classes traded on the Exchange, regardless of the trading station at which they are located. With respect to Hybrid 2.0 Classes (as defined in proposed CBOE Rule 1.1(aaa)), a MM would only be eligible to submit electronic quotations in up to 40 classes for each Exchange membership it owns or up to 30 classes for each Exchange membership it leases, all of which must be located in the MM’s appointed trading station.<sup>7</sup>

This means that a MM would only be eligible to submit electronic quotations into classes located at one appointed trading station. A MM also would be eligible to trade in open outcry in any classes on the Exchange, irrespective of the trading station in which such classes are located.<sup>8</sup> A MM that trades in open outcry away from his/her appointed trading station would be restricted to open outcry trading only and would not be eligible to quote electronically in those classes until such time that the MM notifies the Exchange of his/her intent to change his/her appointment. On any day a MM trades in open outcry outside of his/her appointed trading station, that MM may be required to undertake market-making obligations in

<sup>7</sup> If a trading station consists of less than 40 (30) Hybrid 2.0 classes, each MM that owns (leases) a membership would be eligible to submit electronic quotations in each of the Hybrid 2.0 classes at that trading station, in accordance with the requirements of CBOE Rule 8.3A.

<sup>8</sup> For margin purposes, these transactions would qualify as MM transactions.

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

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

<sup>3</sup> Amendment No. 1 replaces and supercedes CBOE’s original 19b-4 filing in its entirety.

<sup>4</sup> Amendment No. 2 replaces and supercedes CBOE’s original 19b-4 filing and Amendment No. 1 in their entirety.

those classes in which the MM trades in open outcry at the request of the Order Book Official.<sup>9</sup>

The proposal limits a MM's appointments to the classes located at no more than one trading station. In Hybrid, MMs currently may only stream quotes where they are physically present in the trading crowd, which in essence already creates a "one trading station" appointment.<sup>10</sup> As is the case today, MMs would continue to be able to leave one trading station and trade in another appointed trading station; however, they would be required to notify the Exchange prior to switching trading stations and request an appointment in the classes located at a new trading station, which would be granted on a space-available basis (as described in more detail in proposed CBOE Rule 8.3A). A MM's ability to trade in non-appointed classes would be limited to submitting orders for automatic execution pursuant to CBOE Rules 6.8 or 6.13.<sup>11</sup>

Proposed changes to CBOE Rule 8.3(c) also allow a MM to quote remotely. In this regard, with respect to Hybrid classes located at his/her appointed trading station, a MM may submit electronic quotations in the classes in his/her appointed trading station from a location other than the appointed trading station.<sup>12</sup> The one proposed restriction on this ability would prohibit a MM affiliated with an e-DPM from submitting electronic quotations from outside of the appointed trading station in any class in which the affiliated e-DPM has an appointment.<sup>13</sup>

Finally, proposed CBOE Rule 8.3(c) provides that a MM would be presumed to have an appointment in all non-Hybrid 2.0 classes located at his/her appointed trading station unless the MM specifically indicates to the Exchange that he/she does not want to include a particular class(es) as part of

his/her appointment ("excluded classes").<sup>14</sup> CBOE represents that the purpose in allowing MMs to exclude classes from their appointments is to allow the Exchange to improve the amount of liquidity provided in these classes. When a MM excludes a class, the Exchange would be able to provide an appointment in that excluded class to a MM that does not currently trade that class but who has an interest in doing so. This situation is much more favorable and beneficial than one of the likely alternatives: Allowing a MM that does not want to trade that class but is required to do so because it is located in his/her appointed trading station to stream wider and less competitive quotes. A MM is not eligible to submit electronic quotations into any class it designates as an excluded class. Any request by a MM to receive a subsequent appointment in a previously excluded class would be handled in accordance with proposed CBOE Rule 8.3A.

#### CBOE Rule 8.7 Obligations of Market-Makers

The Exchange proposes several changes to CBOE Rule 8.7 to allow MMs to quote from outside of their appointed trading stations. The Exchange proposes to revise CBOE Rule 8.7(b)(i) to remove the exclusive physical presence requirement. Accordingly, as revised, MMs would have an obligation to compete with other MMs to improve markets in all series of options classes comprising the MM's appointment, whether trading electronically or in person. The proposed revision to (b)(ii) clarifies that a MM's firm quote obligation applies to all series in which the MM quotes.

The Exchange proposes to amend CBOE Rule 8.7(b)(iii) in two primary respects. The first change proposes to remove the exclusive physical presence requirement and states that a MM has an obligation to update quotes in his/her appointed classes at the trading station where the MM quotes (whether in-person or electronically). The second change is designed to clarify the permissible methods by which a MM may submit quotes and orders in both appointed and non-appointed classes. Proposed new paragraph (iii)(A) provides that with respect to trading in appointed classes:

(1) MMs who are physically present in their appointed trading station may enter quotes and orders in their appointed classes by public outcry in

response to a request for a quote or, in classes in which Hybrid or Hybrid 2.0 is implemented, through an Exchange-approved electronic interface via an Exchange-approved quote generation device.

(2) MMs may also enter quotes and orders in their appointed Hybrid and Hybrid 2.0 classes from outside of their appointed trading stations (pursuant to CBOE Rule 8.3) through an Exchange-approved electronic interface via an Exchange-approved quote generation device.

(3) MMs, whether in their appointed trading stations or not, may also submit orders for automatic execution in accordance with the requirements of CBOE Rules 6.8 or 6.13. Proposed paragraph (b)(iii) provides that with respect to trading in non-appointed classes,

MMs may submit orders for automatic execution in accordance with the requirements of CBOE Rules 6.8 or 6.13.<sup>15</sup> In this regard, CBOE Rule 8.3 also would prohibit a MM from quoting electronically into a non-appointed class.

The Exchange proposes changes to paragraph (c) to ensure that a MM who trades in classes located outside of his appointed trading station would be required to fulfill all obligations imposed by CBOE Rule 8.7(b) and, for the rest of the trading day, the MM may be called back to that station to make markets in open outcry in the classes in which they traded.

Current CBOE Rule 8.7(d) governs market-making obligations in Hybrid classes. Generally, the extent of a MM's obligations is dictated by the amount of volume a MM transacts electronically. The Exchange intends to retain paragraph (d)(i)<sup>16</sup> and amend paragraph (d)(ii). As amended, MMs that transact more than 20% of their volume electronically would be obligated to comply with the bid-ask width requirements of CBOE Rule 8.7(b)(iv),<sup>17</sup> maintain continuous quotes for at least ten contracts in 60% of the series of his/her appointed classes,<sup>18</sup> and respond to all open outcry requests for quotes with

<sup>15</sup> CBOE Rule 6.8 applies to non-Hybrid classes, while CBOE Rule 6.13 applies to Hybrid classes.

<sup>16</sup> Paragraph (d)(i) applies to MMs that transact less than 20% of their contract volume electronically.

<sup>17</sup> Currently \$5 except during the opening rotation.

<sup>18</sup> A MM's undecremented quote must be for ten contracts unless the underlying market disseminates a 1-up market, in which case MMs who have automated the process may similarly quote 1-up. This "1-up" pilot program is scheduled to expire on August 17, 2005. See CBOE Rules 8.7(d)(i)(B) and (d)(ii)(B).

<sup>9</sup> See CBOE Rule 8.7(c), discussed *infra*.

<sup>10</sup> The Exchange represents that it is gradually transferring all equity classes to the Hybrid Trading System and anticipates having all such classes on Hybrid within the first quarter of 2005.

<sup>11</sup> As part of its appointment, a MM may trade in open outcry all classes located on the Exchange. See proposed CBOE Rule 8.7(b)(iii) for the permissible methods by which MMs may submit quotes and orders in appointed and non-appointed classes. CBOE Rule 6.8 applies to non-Hybrid classes, while CBOE Rule 6.13 applies to Hybrid classes.

<sup>12</sup> With respect to Hybrid 2.0 classes, a MM would only be permitted to quote electronically into those classes to which it is appointed and no more than 40 (30) for each membership it owns (leases).

<sup>13</sup> See CBOE Rule 8.93(vii). See also proposed CBOE Rule 8.4(c)(i) in the Exchange's proposed RMM filing. The same prohibition would apply to MMs affiliated with RMMs and is contingent upon SEC approval of the Exchange's RMM filing (see *supra* note 6).

<sup>14</sup> Because MMs must specifically designate which Hybrid 2.0 classes they would trade as part of their appointment, there is no need to have them designate which Hybrid 2.0 classes they would not trade.

a ten-up, legal width market.<sup>19</sup> Proposed for elimination is the tiered continuous quoting requirement that is dependent upon the amount of volume transacted electronically on the Exchange. CBOE believes an across-the-board 60% quoting requirement is simpler and more effective.

The Exchange also proposes changes to Interpretations and Policies .03 to CBOE Rule 8.7. All MMs would still be required to comply with CBOE Rule 8.7.03(A), which requires 75% of a MM's volume to be in his/her appointed classes. The Exchange intends to retain the in-person requirement contained in current paragraph (B) yet limit its application to non-Hybrid classes. Because MMs would have the ability to quote from outside of their appointed trading stations, CBOE believes that an in-person requirement no longer makes sense.<sup>20</sup>

Finally, the Exchange proposes to amend CBOE Rule 8.8.01's definition of "station" to remove the requirement that an appointment must at least include all of the classes of options traded at one station.<sup>21</sup> As proposed in CBOE Rule 8.3, a MM would be presumed to have an appointment in all non-Hybrid 2.0 classes located at his/her appointed trading station unless the MM specifically excludes specific classes. The ability of MMs to exclude classes from their appointments renders necessary the change to CBOE Rule 8.8.01.

#### CBOE Rule 8.3A Maximum Number of Market Participants Quoting Electronically Per Product

The Exchange does not have unlimited systems bandwidth capacity to support an unlimited number of electronic quoters in every class. For this reason, the Exchange would limit the number of members quoting electronically in each product ("Class Quoting Limit" or "CQL") traded on Hybrid or Hybrid 2.0.<sup>22</sup> By limiting the number of quoters in all Hybrid and Hybrid 2.0 classes/products, the Exchange ensures it would have the ability to effectively handle all quotes generated by members. The number of members permitted to quote in each product is specified in proposed CBOE

Rule 8.3A.01. The methodology for determining which members would be able to quote electronically in a product is governed by proposed CBOE Rule 8.3A(a)–(c).

When a CQL is established for each product, the following criteria govern which members are entitled to quote electronically in that subject product. A MM (excluding the e-DPM) that is not eligible to quote electronically in a product still may quote in open outcry in that product.

#### Products Trading on the Hybrid 2.0 Platform as of January 6, 2005 and Products Trading on the Hybrid Trading System as of January 6, 2005

The DPM and e-DPMs (if applicable<sup>23</sup>) assigned to the product on January 6, 2005, and MMs who: (1) Are in good standing with the Exchange; and (2) (i) have transacted at least 80% of their MM contracts and transactions in-person in each of the three immediately preceding calendar months prior to January 6, 2005 in option products traded in the trading station; or (ii) were physically present in the trading station acting in the capacity of a MM on January 6, 2005, are entitled to quote electronically in those products for as long as they maintain an appointment those products.<sup>24</sup>

All other MMs and approved e-DPMs that request the ability to submit quotes electronically in the subject product would be entitled to quote electronically in that product in the order in which they so request provided the number of members quoting electronically in the product does not exceed the CQL. When the number of members in the product quoting electronically equals the CQL, all other members requesting the ability to quote electronically in that product would be wait-listed in the order in which they submitted the request.

The waiting list operates based on time priority. When the product can accommodate another electronic quoter (whether due to attrition or an increase in the CQL), the member at the "top" of the list (*i.e.*, the member that has been on the waiting list the longest amount of time) has priority. Once a member is wait-listed, the Exchange may not alter his/her position on the wait-list other than to improve such position (*i.e.*, the Exchange may not place other members

ahead of a previously wait-listed member). If a wait-listed member is offered, yet refuses, the ability to quote electronically in the subject product, the member would be removed from that waiting list.

#### Products Added to the Hybrid 2.0 Platform After January 6, 2005

With respect to a product that is added to the Hybrid 2.0 Platform after January 6, 2005, the DPM and e-DPMs appointed to the product would be entitled to quote electronically. All MMs quoting in the product prior to its addition to the Hybrid 2.0 Platform would be entitled to quote electronically provided that: (i) They have transacted at least 80% of their MM contracts and transactions in-person in each of the three immediately preceding calendar months prior to the product being added to the Hybrid 2.0 Platform in option products traded in the trading station; or (ii) they were physically present in the trading station acting in the capacity of a MM on the day prior to the product being added to the Hybrid 2.0 Platform. These standards, which also are contained in paragraph (a) of this rule, would ensure that MMs that maintained a presence in the class prior to its conversion to the Hybrid 2.0 Platform would be guaranteed the ability to quote electronically upon conversion to Hybrid 2.0. If at the time a product is added to the Hybrid 2.0 Platform the aggregate number of DPMs, e-DPMs, and MMs entitled to quote electronically in the product exceeds the CQL, then the product would have an "increased CQL," as described in Interpretations and Policies .01(a). Reduction of any "increased CQL" would be in accordance with the procedures described in Interpretations and Policies .01(a).

All other members would be entitled to quote electronically in that product in the order in which they so request provided the number of members quoting electronically in the product does not exceed the CQL. When the number of members quoting electronically in the product equals the CQL, all other members would be wait-listed in the order in which they request the ability to quote electronically. The wait-list would operate as described in CBOE Rule 8.3A(a).

#### Products Added to the Hybrid Trading System After January 6, 2005

With respect to a new product that commences trading on the Hybrid Trading System after January 6, 2005, the assigned DPM would be entitled to quote electronically. Thereafter, all other members would be entitled to

<sup>19</sup> Only MMs physically present in a trading station would have the ability to provide markets in open outcry.

<sup>20</sup> A MM's ability to quote electronically from outside of its appointed trading station is limited to appointed Hybrid and Hybrid 2.0 classes, as described and proposed in CBOE Rule 8.3(c).

<sup>21</sup> This same proposed amendment appears in File No. SR-CBOE-2004-75.

<sup>22</sup> For purposes of this rule, the term "product" refers to all options of the same single underlying security/value.

<sup>23</sup> Non-Hybrid 2.0 classes do not have e-DPMs.

<sup>24</sup> CBOE represents that the practical effect of this rule is to ensure that the DPM, all MMs, and all e-DPMs would be guaranteed the ability to quote electronically in products trading at their primary trading stations as of January 6, 2005. There were no products as of this date for which the number of members quoting electronically exceeded the CQL for that product.

quote electronically in that product in the order in which they so request provided the number of members quoting electronically does not exceed the CQL. When the number of members quoting electronically in the product equals the CQL, all other members would be wait-listed in the order in which they request the ability to quote electronically. The wait-list would operate as described in CBOE Rule 8.3A(a).

#### Establishing the Class Quoting Limits

There would not be a uniform CQL for each class traded on the Exchange, rather the CQL would vary by product. This section describes the process for affixing CQLs for all products.

#### Products Trading on the Exchange as of January 6, 2005

The proposed CQL for all products trading on the Hybrid Trading System would be twenty-five (25). The twenty-sixth member to request the ability to quote electronically in a Hybrid class would be first on the wait-list for that product.

The proposed CQLs for products trading on the Hybrid 2.0 Platform would vary based on trading volume over the preceding calendar quarter. The proposed CQL would be as follows: 40 for the 20% most actively-traded products over the preceding quarter; 35 for the next 20% most actively-traded products; 30 for the next 20% most actively-traded products; and 25 for all other Hybrid 2.0 Platform products.<sup>25</sup> The Exchange selected these levels because they strike the optimum balance between the Exchange's need to not exceed its internal quote capacity by allowing an unlimited number of quoters in every class and the need to provide greater liquidity in the more actively-traded classes.

At the end of each calendar quarter, products would be assigned a different CQL based on the revised trading volume statistics ("new CQL"). For example, if a product with 25 electronic quoters then qualifies (based on increased trading volume) for 35 electronic quoters, the CQL increases immediately and those on the wait-list would be added (if applicable). Otherwise, time priority governs who would be entitled to quote electronically in that class.

If the number of members quoting electronically in the product on the last day of the quarter equals or is less than the new CQL, then the previous CQL is reduced immediately to the new CQL.<sup>26</sup>

If the number of members quoting electronically in the product on the last day of the quarter is greater than the new CQL, then that product would have an "increased" CQL. The reason for the "increased" CQL is to avoid having to prevent members from quoting electronically in a product in which they are already quoting. In this regard, the "increased" CQL would equal the number of members quoting electronically in the product on the last day of the quarter. If a member changes his/her appointment and ceases quoting electronically in that product, the "increased" CQL would decrease by one until such time that the number of remaining members quoting electronically in the product equals the new CQL.<sup>27</sup> From that point forward, the number of members quoting electronically in the product may not exceed the new CQL.

As an example, assume product ABC's existing CQL is 40, the new CQL on rebalancing date should be 30, and that 33 members are quoting electronically in the product on the last day of the quarter. Rather than prevent three members from quoting, the CQL would be increased to 33. If one of those 33 members "drops" the product from his/her appointment and thus no longer quotes electronically, the "increased" CQL would drop to 32. When two others leave, the CQL becomes 30 and the first member on the wait-list would be entitled to quote electronically when one other member leaves the product.

#### Products Not Traded on the Exchange as of January 6, 2005

The proposed CQL for all products newly-listed on the Exchange after January 6, 2005 would be 25 until such time that the CQL increases in accordance with this Interpretations and Policies .01. In this regard, when the product's trading volume increases such that the product then qualifies for a higher CQL, it would receive a higher CQL.

#### Increasing the Class Quoting Limit in Exceptional Circumstances

CBOE believes that having an established upper limit on the number of members that may quote electronically in any given product works effectively for the overwhelming vast majority of products traded on CBOE. Nevertheless, there are bound to be instances in which the demand to quote in a new or existing product greatly exceeds the CQL for that product. For example, more than 150 members trade options on the S&P 500

("SPX") index. If the Exchange were to trade SPX options on Hybrid, a CQL of 25 would be low. It is for these rare instances that the Exchange proposes to adopt a rule to allow for a higher CQL.

In this regard, when exceptional circumstances warrant, the President of the Exchange (or in his absence his designee, who must be a Senior Vice President of the Exchange or higher) may increase the CQL for an existing or new product. "Exceptional circumstances" refers to substantial trading volume, whether actual or expected (e.g., in the case of a new product or a major news announcement). The Exchange does not intend for this discretion (*i.e.*, to increase the CQL) to be exercised on an intra-day basis. Rather, the primary instance for which the Exchange anticipates this discretion being exercised is for the addition of new products to Hybrid or Hybrid 2.0 for where the standard CQL is not high enough to accommodate the anticipated trading volume and member demand. When the CQL increases pursuant to the President exercising his authority in accordance with this paragraph, members on the wait-list (if applicable, with respect to a product already trading on Hybrid), have first priority and remaining capacity would be filled on a time priority basis.<sup>28</sup>

Upon cessation of the exceptional circumstances, the President (or his designee), in his discretion, may determine to reduce the CQL. Any reduction in the CQL must be undertaken in accordance with the procedure established in paragraph .01(a)(ii) above with respect to lowering the "increased CQL." This means that if the new CQL is less than the number of members quoting electronically in that product, there would be an "increased" CQL. Any actions taken by the President of the Exchange pursuant to this paragraph (to increase or decrease the CQL) would be submitted to the SEC in a rule filing pursuant to Section 19(b)(3)(A) of the Act.

The Exchange would announce all changes regarding CQLs to the membership via Information Circular. The Exchange may increase the CQL levels established in paragraphs .01(a) and (b) by submitting to the SEC a rule filing pursuant to Section 19(b)(3)(A) of the Act. The Exchange may decrease the CQL levels established above upon SEC approval of a rule filing submitted pursuant to Section 19(b)(2) of the Act.

<sup>25</sup> See proposed CBOE Rule 8.3A.01.

<sup>26</sup> See proposed CBOE Rule 8.3A.01(i).

<sup>27</sup> See proposed CBOE Rule 8.3A.01(ii).

<sup>28</sup> For new products, proposed CBOE Rule 8.3A(a)-(c) governs.

## Other Minor Rule Changes

The Exchange proposes to amend the definition of "market participant" in CBOE Rule 6.45A to remove the in-person requirement from MMs. The Exchange proposes definitions in CBOE Rule 1.1(aaa) for the terms "Hybrid Trading System" and "Hybrid 2.0 Program."

### 2. Statutory Basis

The Exchange believes that the proposal, as amended, would enhance liquidity on the Exchange. For this reason, the Exchange believes the proposed rule change, as amended, is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>29</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>30</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

#### *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 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

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 Exchange consents, the Commission will:

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

(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, 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-58 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-58. 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, 450 Fifth Street, NW., Washington, DC 20549. 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-2004-58 and should be submitted on or before March 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>31</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-801 Filed 2-28-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51244; File No. SR-CBOE-2003-30]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto Relating to Position Limits and Exercise Limits

February 23, 2005.

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 July 9, 2003, 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 and II below, which Items have been prepared by the Exchange. On January 8, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 29, 2004, the CBOE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On February 10, 2005, the CBOE filed Amendment No. 3 to the proposed rule change.<sup>5</sup> On February 15, 2005, the CBOE filed Amendment No. 4 to the proposed rule change.<sup>6</sup> The Commission is publishing this notice to solicit

<sup>31</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> See letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated January 7, 2004 ("Amendment No. 1").

<sup>4</sup> See letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated October 28, 2004 ("Amendment No. 2").

<sup>5</sup> Amendment No. 3, which replaced and superseded the original filing and the first and second amendments in their entirety, eliminated, among other things, certain hedge exemptions that were proposed in the original filing, requested that the increases to the standard position and exercise limits proposed in the filing be adopted as a six-month pilot program, and requested accelerated approval of the proposed rule change.

<sup>6</sup> Amendment No. 4, which replaced and superseded the original filing and the previous amendments in their entirety, retained the changes made by Amendment No. 3 and made technical corrections to the filing.

<sup>29</sup> 15 U.S.C. 78f(b).

<sup>30</sup> 15 U.S.C. 78f(b)(5).