

imbalances to be published as soon as practicable after 8 a.m. (CT), and thereafter at approximately 8:20 a.m. (CT), on the Settlement Date.<sup>11</sup>

The proposed rule change also provides a limited exception that would permit cancellations and changes to booked orders falling under this provision that are made to correct a legitimate error. The member submitting the change or cancellation would be required to prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and would be required to file a copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange. In addition, two Floor Officials would have the ability to suspend the new rule in the event of unusual market conditions.<sup>12</sup>

The Exchange also proposes (i) to move the cut-off time for the submission of all other index option orders for participation in the modified ROS opening on Settlement Date mornings from 8:28 a.m. (CT) to 8:25 a.m. (CT); (ii) to change the time standards reflected in the rule from CST to CT, since Chicago is in the Central Time zone; and (iii) to revise the rule language in current CBOE Rule 6.2A.03(viii) to reflect that the Exchange has recently implemented a systems change to ROS that automatically generates cancellation orders for Exchange market-maker, away market-maker, specialist, and broker-dealer orders which remain on the electronic book following the modified ROS opening procedure.

### 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 applicable to a national securities exchange.<sup>13</sup> In particular, the Commission believes that the proposed rule change is consistent with the requirements on Section 6(b)(5) of the Act<sup>14</sup> that the rules of a national

securities exchange, in part, promote just and equitable principles of trade, 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.

The Exchange believes that the proposed rule change will improve the modified ROS opening procedure by exposing for a longer period of time order imbalances in index options resulting from the unwinding of hedged volatility index future positions. The Exchange further believes that the market participants to whom the proposed rule change applies would not be materially affected by the 8 a.m. (CT) cut-off time, because the last day of trading in volatility index futures in the applicable expiring month occurs on the day before Settlement Date, and holders of open volatility index futures are generally aware before 8 a.m. (CT) of the related index options series that they need to place on the book in order to adequately unwind their hedges. The Commission believes that the proposed rule change may serve the intended benefit without imposing an undue burden on these participants. The Commission notes that it has approved a similar rule in another context.<sup>15</sup>

The proposed rule change would also modify the deadline for submitting all other index options orders for participation in the modified ROS opening procedure, and any changes to or cancellations of any orders, from 8:28 a.m. (CT) to 8:25 a.m. (CT). The Exchange believes that this rule change would give Lead Market-Makers on the CBOE additional time to review order imbalances on the book in order to setting the Autoquote values that are used in the modified ROS opening procedures. The Commission believes this proposed adjustment is reasonable to achieve the intended benefit.

The Commission further believes that the other associated aspects of the proposed rule change are appropriate to clarify the application of the rule and to provide for its reasonable implementation.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-CBOE-2004-86), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52374; File No. SR-CBOE-2005-66]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Pilot Programs Applicable to Fee Caps for Dividend Spread and Merger Spread Transactions Until March 1, 2006

September 1, 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 24, 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 CBOE. The Exchange designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) 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 parties.

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

The Exchange proposes to amend its Fees Schedule to extend until March 1, 2006 the pilot programs applicable to fee caps on dividend spread and merger spread transactions. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Office of the Secretary, CBOE, and at the Commission.

<sup>11</sup> The Exchange represents that it would publish the imbalance on its Web site. See Notice.

<sup>12</sup> For example, the CBOE states that if a significant market event occurs between 8:00 a.m. (CT) and 8:25 a.m. (CT), Floor Officials may determine to suspend the rule provision in the interest of maintaining a fair and orderly market so that limit orders placed in the book to unwind hedged volatility index futures positions are not unfairly disadvantaged as a result of a significant market move that would result in limit orders going unexecuted.

<sup>13</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See NYSE Rule 123C(6). See, e.g., Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23474 (June 22, 1988) (order approving File Nos. SR-NYSE-87-11 and 88-04).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</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)(ii)

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

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. 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, the Proposed Rule Change

#### 1. Purpose

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with "dividend spread" transactions<sup>5</sup> at \$2,000 for all dividend spread transactions executed on the same trading day in the same options class. A similar fee cap is currently in place for market-maker, firm, and broker-dealer transaction fees associated with "merger spread" transactions<sup>6</sup> executed on the same trading day in the same options class.<sup>7</sup> Both fee caps are in effect as pilot programs that are due to expire on September 1, 2005.<sup>8</sup>

The Exchange proposes to extend both pilot programs until March 1, 2006. No other changes are proposed. The Exchange believes that extension of these fee cap programs should attract additional liquidity and permit the Exchange to remain competitive.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4)

of the Act<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

### 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 that is not necessary or appropriate in furtherance of purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> because it is establishing or changing a due, fee, or other charge applicable only to the Exchange's members. 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 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-2005-66 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 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-66. 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 Exchange. 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-2005-66 and should be submitted on or before September 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Jonathan G. Katz,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52364; File No. SR-ISE-2005-41]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Price Improvement Mechanism

August 31, 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 22, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange

<sup>5</sup> A "dividend spread" is defined as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options.

<sup>6</sup> A "merger spread" transaction is defined 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.

<sup>7</sup> Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE, and Steve Kuan, Special Counsel, Division of Market Regulation, Commission, on August 30, 2005.

<sup>8</sup> See Securities Exchange Act Release Nos. 51468 (April 1, 2005), 70 FR 17742 (April 7, 2005) (SR-CBOE-2005-18), and 51828 (June 13, 2005), 70 FR 35475 (June 20, 2005) (SR-CBOE-2005-42).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</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.