

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51007; File No. SR-CBOE-2005-03]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Allocations of Securities

January 10, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 7, 2005, the Chicago Board Options Exchange, Inc. ("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 CBOE. The Exchange has filed this proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(1) 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 Exchange proposes to adopt an Interpretation to CBOE Rule 8.95 relating to temporary allocations of securities. The text of the proposed rule change is available 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 parts of such statements.

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

##### 1. Purpose

CBOE Rule 8.95 governs the allocation of securities on the Exchange and generally provides a framework by which the Allocation or Special Product Assignment Committee determines whether to allocate a security to a trading crowd or a Designated Primary Market-Maker ("DPM"). Paragraph (b) gives these Committees the ability to consider any factors they believe to be relevant in making such determinations. The purpose of this rule filing is to adopt Interpretations and Policies .05 ("I&P .05") to CBOE Rule 8.95 to clarify that the Exchange has the authority to grant a temporary allocation.

In this regard, the Exchange anticipates listing on the Hybrid Trading System ("Hybrid") new option classes on ETFs and possibly indexes in the very near future. Currently, index options and options on ETFs ("index-based products") may only trade on Hybrid if they have an assigned DPM, which precludes the trading of an index-based product on Hybrid using an LMM system or a trading crowd with only Market-Makers. In December, the Exchange filed SR-CBOE-2004-87, which would allow it to trade these index-based products without a DPM. Upon approval of that rule filing, the Exchange would like the ability to reconsider changing the trading platform<sup>5</sup> with respect to these index-based products in order to determine if the product should trade in a non-DPM environment.

Accordingly, proposed I&P .05 provides the ability to grant initial allocations on a temporary basis and at any point within one year to reallocate the security such that it trades on a different trading platform (e.g., from a DPM to a non-DPM trading crowd or vice versa). The proposed I&P provides that the Special Product Assignment or Allocation Committee may make temporary allocations of securities either to a DPM or a non-DPM trading

crowd by explicitly indicating to such DPM or non-DPM trading crowd at the time of allocation that the allocation is temporary. The Committee that made the temporary allocation may, at any time during the first twelve months following the granting of the temporary allocation, determine it is in the best interest of the Exchange to reallocate the security such that: (i) A security initially allocated to a DPM is reallocated to a non-DPM trading crowd; or (ii) a security initially allocated to a non-DPM trading crowd is reallocated to a DPM. While proposed I&P .05 establishes the right to make temporary allocations, nothing in this proposal eliminates the ability of the appropriate committee to take action in accordance with existing paragraphs (c) and (d) of CBOE Rule 8.95.

##### 2. Statutory Basis

CBOE believes the proposed rule change 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>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to 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 written comments on the proposed rule change.

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

The foregoing proposed rule change is immediately effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(1) thereunder,<sup>9</sup> because it constitutes a stated policy, practice, or interpretation with respect to the

<sup>4</sup> 17 CFR 200.30-3(a)(1).

<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)(1).

<sup>5</sup> The term "trading platform," for purposes of this rule filing, refers to the system by which a security trades. A security may trade using a DPM system, an LMM system, or upon approval of SR-CBOE-2004-87, with a Market-Maker system without a DPM or LMM.

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

<sup>7</sup> 15 U.S.C. 78(f)(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such 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-2005-03 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-2005-03. 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-2005-03 and should be submitted on or before February 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51018; File No. SR-FICC-2004-14]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Membership Requirements

January 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 14, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2004-14. On July 15, July 30, August 20, and November 10, 2004, FICC filed amendments 1, 2, 3, and 4 respectively. On January 3, 2005, FICC filed amendment 5 and withdrew amendments 1, 2, 3, and 4. The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared primarily by FICC. 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

FICC proposes to amend the rules of its Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") regarding membership requirements for non-U.S. applicants and members.

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

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

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

##### 1. Annual Audited Financial Statements

Currently, GSD requires non-U.S. members and applicants to submit financial statements prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") "whenever necessary and feasible." MBSD requires non-U.S. members and applicants to submit financial statements prepared in accordance with U.S. GAAP. Both divisions review such financial statements as part of their credit risk management program.

FICC proposes to amend these requirements uniformly across both divisions to enable non-U.S. members and applicants to submit financial statements that are prepared according to any other generally accepted accounting methodology ("non-U.S. GAAP").

In order to lessen the risk associated with accepting financial statements prepared in accordance with non-U.S. GAAP, FICC would increase the existing minimum financial requirements of each applicant and member based on which non-U.S. GAAP was used to prepare the audited financial statement in the following manner:

(a) For applicants and members whose financial statements are prepared in accordance with International Financial Reporting Standards ("IFRS"), the Companies Act of 1985 ("U.K. GAAP"), or Canadian GAAP, the minimum financial requirements would be one and one-half times the applicable requirements.

(b) For applicants and members whose financial statements are prepared in accordance with a European Union country GAAP ("EU GAAP") other than U.K. GAAP, the minimum financial requirements would be five times the applicable requirements.

(c) For applicants and members whose financial statements are prepared in accordance with any other type of GAAP, the minimum financial requirements would be seven times the applicable requirements.<sup>3</sup>

<sup>2</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>3</sup> In order to determine the appropriate premiums, FICC's risk management staff compiled all the U.S. GAAP and non-U.S. GAAP equity capital figures of financial institutions that filed SEC Form 20-F or 40-F for their 2002 and/or 2003 fiscal year ends to identify the largest absolute differences between U.S. GAAP and non-U.S. GAAPs. The staff found that approximately 50% was the largest difference when the U.S. GAAP figures were compared to IFRS, U.K. GAAP, and Canadian GAAP. The largest

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 5 U.S.C. 78s(b)(1).