

Furthermore, the Commission notes that Amex's suspension of transaction fees have been approved for similar products and that trading in the Gold Trust on the Exchange commenced on January 28, 2005. The Exchange also has stated that the fee suspension is for all market participants and is intended to provide cost savings to investors, members, and other market participants. For these reasons, the Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change and has determined to designate the proposed rule change as operative on February 1, 2005, the date it was submitted to the Commission.

At any time within 60 days of the filing of this 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 SR-Amex-2005-14 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 SR-Amex-2005-14. 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 on the Exchange's Web site at <http://www.amex.com> and 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 SR-Amex-2005-14 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51172; File No. SR-CBOE-2004-63]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Short Term Option Series

February 9, 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 October 12, 2004, 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 substantially prepared by the Exchange. CBOE filed Amendment No. 1 to the proposed rule change on January 21, 2005.<sup>3</sup> The Commission is publishing this notice to solicit comment on the proposed rule change, as amended, from interested persons.

<sup>15</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> Amendment No. 1 replaced the original filing in its entirety.

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

CBOE proposes to amend its rules to permit the listing of option series that expire one week after being opened for trading ("Short Term Option Series"). This rule change is being proposed as a one-year pilot program. The text of the proposed rule change, as amended, is available on CBOE's Web site (<http://www.cboe.org/legal/>), at 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, CBOE included statements concerning the purpose of and basis for the proposal 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. 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 proposes to amend its rules to accommodate the listing of Short Term Option Series that would expire one week after the date on which the series is opened. Short Term Option Series could be opened on any approved option class<sup>4</sup> on any Friday that is a business day ("Short Term Option Opening Date") and would expire at the close of business on the next Friday that is a business day ("Short Term Option Expiration Date"). If a Friday were not a business day, the series could be opened (or would expire) on the first business day immediately prior to that Friday. Short Term Option Series would be P.M.-settled.

The proposal would allow the Exchange to open up to five Short Term Option Series for each Short Term Option Expiration Date. The strike price for each series would be fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security, or the calculated index value

<sup>4</sup> Short Term Options Series could be opened in any option class that satisfied the applicable listing criteria under CBOE rules (*i.e.*, stock options, options on exchange-traded funds as defined under Interpretation and Policy .06 to CBOE Rule 5.3, or options on indexes).

in the case of an index class, at about the time that Short Term Option Series was opened for trading on the Exchange. No Short Term Option Series on an option class could expire in the same week in which monthly option series on the same class expire, except that with regard to index option classes, no Short Term Option Series in an index option class could expire in the same week during which any P.M.-settled monthly option series in the same index class expires or, in the case of QIXs, in the same week during which QIXs expire. This provision means that a Short Term Option Series in an index class (which is P.M.-settled) could expire in the same week in which an A.M.-settled option series in the same underlying index class expires. Finally, the interval between strike prices on Short Term Option Series would be the same as the strike price for series in the same option class that expires in accordance with the normal monthly expiration cycle.

The Exchange believes that Short Term Option Series would provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. At the same time, the Exchange is cognizant of the need to be cautious in introducing a product that can increase the number of outstanding strike prices. For that reason, the Exchange intends to employ a limited pilot program ("Pilot Program") for Short Term Options Series. Under the terms of the Pilot Program, the Exchange could select up to five option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date.<sup>5</sup> The Exchange also would be allowed to list those Short Term Option Series on any option class that is selected by other securities exchanges that employ a similar Pilot Program under their respective rules. This would ensure that the addition of the new series through this Pilot Program would have only a negligible impact on the Exchange's and OPRA's quoting capacity. Also, limiting the term of the Pilot Program to a period of one year would allow the Exchange and the Commission to determine whether the Short Term Option Series program should be extended, expanded, and/or made permanent.

If the Exchange were to propose an extension or an expansion of the program, or should the Exchange propose to make the program permanent, the Exchange would submit, along with any filing proposing such amendments to the program, a Pilot

Program report ("Report") that would provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. The Report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Short Term Option Series were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of CBOE, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how CBOE addressed such problems; (5) any complaints that CBOE received during the operation of the Pilot Program and how CBOE addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The Report must be submitted to the Commission at least sixty (60) days prior to the expiration date of the Pilot Program.

The Exchange represents that it has the system capacity to adequately handle the series that would be permitted by this proposal. The Exchange provided to the Commission information in a confidential submission that supports its system capacity representations.

## 2. Statutory Basis

The Exchange believes that the introduction of Short Term Option Series would attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedging tool to investors. For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and with Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade as well as 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 would 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

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

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-2004-63 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-2004-63. 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

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

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

<sup>5</sup> See note 4 *supra*.

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-2004-63 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-635 Filed 2-15-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51173; File No. SR-CBOE-2004-85]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Regarding Designated Primary Market-Makers' Handling of Non-Public Customer Orders

February 9, 2005.

#### I. Introduction

On December 15, 2004, the Chicago Board Options Exchange, Inc. ("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 amend its rules regarding Designated Primary Market-Makers' handling of non-public customer orders. On December 21, 2004, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on December 29, 2004.<sup>4</sup> The

Commission received no comments on the proposal.

On February 4, 2005, the CBOE submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2. Simultaneously, the Commission is providing notice of filing of Amendment No. 2 and granting accelerated approval of Amendment No. 2.

#### II. Description

The Exchange proposes to amend CBOE Rule 8.85(b)(iii) to require each Designated Primary Market-Maker ("DPM") to accord priority to both public and non-public customer orders which a DPM represents as agent over its own principal transactions, unless the customer who placed the order has consented to not being accorded such priority.<sup>6</sup>

#### 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<sup>7</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>8</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires that the rules of an exchange be 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.

Specifically, the Commission finds that requiring DPMs to accord priority to all orders, non-public as well as public customer orders, that they hold as agent in CBOE's rules should ensure that these orders are handled in

<sup>5</sup> Amendment No. 2 deleted the language of Interpretation and Policy .03 of CBOE Rule 8.85, which defined "public customer" order for purposes of CBOE Rule 8.85(b)(iii). Since the term "public customer" order will no longer be in CBOE Rule 8.85(b)(iii), the interpretation is no longer necessary.

<sup>6</sup> On January 25, 2002, the Commission approved a CBOE proposed rule change eliminating from CBOE rules the obligation of DPMs to accord priority to non-public customer orders. See Securities Exchange Act Release No. 45341 (January 25, 2002), 67 FR 5016 (February 1, 2002). In this filing, the Exchange proposes to revert back to the original language.

<sup>7</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>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

compliance with federal securities laws and agency law principles.

In Amendment No. 2, the CBOE proposed to delete the language of Interpretation and Policy .03 of CBOE Rule 8.85, which defined the term "public customer" order for purposes of CBOE Rule 8.85(b)(iii). Because the term "public customer" order will no longer be in CBOE Rule 8.85(b)(iii), the interpretation is no longer necessary. The Commission notes that the proposed text of CBOE Rule 8.85(b)(iii) has been subject to notice and comment, and that no comments have been received. The Commission believes that the deletion of the language of proposed language of Interpretation and Policy .03 of CBOE Rule 8.85 will clarify CBOE Rule 8.85 by removing a definition that is no longer necessary and, therefore, merits approval. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5)<sup>10</sup> and Section 19(b)(2) of the Act,<sup>11</sup> to approve Amendment No. 2 on an accelerated basis prior to the 30th day of the date of publication of notice of filing thereof in the **Federal Register**.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 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-2004-85 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-2004-85. 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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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> Amendment No. 1 made technical corrections to the propose rule text of the proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 50909 (December 22, 2004), 69 FR 78072.