

*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. 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-2005-50 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-2005-50. 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, 100 F Street, NE., 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 publicly available. All submissions should refer to File Number SR-CBOE-2005-50 and should be submitted on or before August 9, 2005.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, 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>10</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires among other things, that the rules of the Exchange are designed 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. The Commission notes that the Preferred DPM Program currently operates on a one-year pilot basis.<sup>12</sup> The proposal would increase the participation entitlement percentage for a Preferred DPM when there are two or more Market-Makers also quoting at the NBBO. Because the proposal would not increase the participation entitlement beyond the currently acceptable threshold, the Commission does not believe that the proposal will negatively impact quote competition on the CBOE.<sup>13</sup> In addition, the Commission notes that it has approved similar participation entitlements percentages on other options exchanges.<sup>14</sup>

The CBOE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal should allow the CBOE to immediately implement the participation entitlement percentage for a Preferred DPM similar to the percentage already in place on the Phlx and the ISE. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

<sup>10</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See *supra* note 3. The CBOE subsequently modified the amount of the participation entitlement allocable to the Preferred Market-Maker. See *supra* note 4.

<sup>13</sup> See *supra* note 5.

<sup>14</sup> See *supra* notes 5 and 6.

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

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-CBOE-2005-50) be, and hereby is, approved on an accelerated basis.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52019; File No. SR-CBOE-2005-53]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit a Limited Suspension of Exchange Membership Transactions to Allow for the Dissemination of Information Deemed Material to the Value of Exchange Memberships

July 12, 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 8, 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 and II below, which Items have been prepared by the CBOE. 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 Exchange Rule 3.14—*Sale and Transfer of Membership*, to permit the Exchange to suspend membership purchase and sale transactions for a limited period of time to allow for the dissemination of information deemed to be material to the value of Exchange memberships. Below is the text of the proposed rule change. Proposed new language is italicized.

\* \* \* \* \*

<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.

## RULE 3.14—Sale and Transfer of Membership

(a)–(d) Unchanged.

\* \* \* *Interpretations and Policies:*

.01 *In circumstances in which the Board of Directors deems it necessary in the interest of maintaining a fair and orderly market in transferable Exchange memberships, the Board may declare a suspension of membership purchase and sale transactions to allow for the dissemination of information deemed to be material to the value of Exchange memberships. Any such suspension shall be limited in duration to no longer than one business day. During any such suspension, any bid or offer previously submitted to the Membership Department in accordance with Rule 3.13(b) or Rule 3.14(a) may be withdrawn by the submission to the Membership Department of a written revocation of the bid or offer. No new bids or offers may be submitted during any such suspension.*

\* \* \* \* \*

## 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 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. The 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 purpose of the proposed rule change is to allow for the temporary suspension of Exchange membership purchase and sale transactions in the interest of maintaining a fair and orderly market in transferable Exchange memberships. Specifically, the proposal would permit the Board of Directors to suspend membership transactions for a limited period of time to allow for the dissemination of information deemed to be material to the value of Exchange memberships. During a temporary suspension, any bid or offer to purchase or sell a membership previously submitted to the Exchange's Membership Department would be permitted to be withdrawn through the submission of a written revocation of the bid or offer. No new bids or offers

would be permitted to be submitted during a suspension. In addition, the proposed rule provides that no suspension would be permitted to last more than one business day.

Currently, the Exchange has no rule in place specifically authorizing the Exchange to temporarily suspend membership transactions. The Exchange believes that having such a rule would provide CBOE with the ability to allow for material information relating to the value of Exchange memberships to be disseminated and absorbed by members before additional seat transactions may be consummated. This would permit the Exchange to ensure that members engaging in seat transactions have an adequate opportunity to learn of the information so that they are not at an informational disadvantage and have time to reassess their current bids and offers in light of the new material information. Having such a rule would assist the Exchange in maintaining a fair and orderly market in CBOE memberships. The Exchange believes one business day is a sufficient amount of time to allow the seat market to absorb any disseminated material information.

#### 2. Statutory Basis

The Exchange believes that having the ability to declare a temporary suspension of membership transactions would serve to promote a fair and orderly market for its memberships. For this reason, the Exchange 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)<sup>3</sup> of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5)<sup>4</sup> 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.

### 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>5</sup> and subparagraph (f)(6) of Rule 19b-4<sup>6</sup> thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

Under Rule 19b-4(f)(6)(iii) of the Act,<sup>7</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive to 30-day operative delay. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date because such waiver will permit the Exchange to implement the rule without undue delay.<sup>8</sup>

## 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:

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>8</sup> For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

*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-2005-53 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-2005-53. 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 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-2005-53 and should be submitted on or before August 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52016; File No. SR-NYSE-2005-29]

**Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Remove Incorrect Reference in Its Rule Relating to Failure To Honor an Arbitration Award**

July 12, 2005.

On April 25, 2005, the New York Stock Exchange, Inc., ("NYSE" or the "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 NYSE Rule 637. The proposed rule change was published for comment in the **Federal Register** on May 6, 2005.<sup>3</sup> The Commission received one comment on the proposal.<sup>4</sup> On July 5, 2005, the NYSE filed a response to the comment letter.<sup>5</sup> This order approves the proposed rule change.

**I. Description of Proposed Rule Change**

Current NYSE Rule 637 provides that Exchange members, allied members, registered representatives, and member organizations that fail to honor arbitration awards of the NYSE, other self-regulatory organizations, or the American Arbitration Association are "subject to disciplinary proceedings in accordance with NYSE Rule 476, NYSE Rule 476A<sup>6</sup> or Article IX" of the NYSE Constitution and Rules.

Although current NYSE Rule 637 specifies NYSE Rule 476A as a possible

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

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

<sup>3</sup> See Securities Exchange Act Release No. 51622 (April 27, 2005), 70 FR 24146.

<sup>4</sup> See letter from Robert S. Clemente to Jonathan G. Katz, Secretary, Commission, dated May 13, 2005 ("Clemente Letter").

<sup>5</sup> See letter to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, from Mary Yeager, Assistant Secretary, NYSE, dated July 5, 2005 ("NYSE Response Letter").

<sup>6</sup> NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed \$5000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. The NYSE represents that the purpose of the NYSE Rule 476A procedure is to provide a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under NYSE Rule 476 would be more costly and time consuming than would be warranted given the minor nature of the violation, or when the violation calls for a stronger regulatory response than an admonition letter would convey. The NYSE states that NYSE Rule 476A preserves due process rights, identifies those rule violations that may be the subject of summary fines, and includes a schedule of fines.

vehicle for disciplinary action to remedy violations of NYSE Rule 637, NYSE Rule 637 was never added to NYSE Rule 476A's "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A." This discrepancy could be eliminated by adding NYSE Rule 637 to the list of rules in NYSE Rule 476A. However, due to the serious nature of any failure to honor an arbitration award,<sup>7</sup> the Exchange's management concluded that violations of NYSE Rule 637 are not properly remedied through the minor fine provisions of NYSE Rule 476A. Therefore, the discrepancy would be more appropriately eliminated through an amendment deleting NYSE Rule 637's reference to NYSE Rule 476A.

**II. Summary of Comment and NYSE's Response**

The Commission received a comment letter on the proposed rule change that supported the adoption of the proposal.<sup>8</sup> The commenter further suggested that the NYSE propose another change to NYSE Rule 637 to conform to NASD Rule 9554 by extending the penalty of disciplinary action to cover failure to honor an arbitration award to any settlement agreement in any dispute submitted to the NYSE. In its response to the comment, the NYSE maintained that the amendment to NYSE Rule 637 suggested by the commenter is beyond the scope of the proposed rule change.<sup>9</sup>

**III. Discussion**

The Commission has carefully reviewed the proposed rule change, the comment letter, and the NYSE's response and 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>10</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(6) of the Act<sup>11</sup> because it is designed to provide that NYSE's members and persons associated with its members be appropriately disciplined for violation of Exchange rules.

The Exchange has proposed to delete a cross-reference in NYSE Rule 637 that states that a failure to honor an arbitration award is punishable under the Exchange's minor rule violation

<sup>7</sup> The NYSE represents that Exchange arbitration awards rarely remain unsatisfied.

<sup>8</sup> See Clemente Letter, *supra* note 4.

<sup>9</sup> See NYSE Response Letter, *supra* note 5.

<sup>10</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(6).

<sup>9</sup> 17 CFR 200.30-3(a)(12).