securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c).'' Applicant states that it is no longer an investment company as defined in section 3(a)(1)(A) or section 3(a)(1)(C). Applicant states that it is primarily engaged in the business of developing its subsidiaries' real estate businesses, and also actively engaged in conducting a business review, development, and acquisition program for additional real estate business opportunities. Applicant further states that its holdings of money market fund shares are awaiting deployment in its real estate and services industries business strategy. Applicant states it is thus qualified for an order of the Commission pursuant to section 8(f) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52405/ File No. S7–12–01]

Order Extending Temporary Exemption of Banks, Savings Associations, and Savings Banks From the Definition of ''Broker'' Under Section 3(a)(4) of the Securities Exchange Act of 1934

September 9, 2005.

I. Background

The Gramm-Leach-Bliley Act (''GLBA'') repealed the blanket exception of banks from the definitions of ''broker'' and ''dealer'' under the Securities Exchange Act of 1934 (''Exchange Act'') [1] and replaced it with functional exceptions incorporated in amended definitions of ''broker'' and ''dealer.'' Under the GLBA, banks that engage in securities activities either must conduct those activities through a registered broker-dealer or ensure that their securities activities fit within the terms of a functional exception to the amended definitions of ''broker'' and ''dealer.''

The GLBA provided that the amended definitions of ''broker'' and ''dealer'' were to become effective May 12, 2001. On May 11, 2001, the Securities and Exchange Commission (''Commission'') issued interim final rules (''Interim Rules'') to define certain terms used in, and grant additional exemptions from, the amended definitions of ''broker'' and ''dealer.'' [2] Among other things, the Interim Rules extended the exceptions and exemptions granted to banks under the GLBA and Interim Rules to savings associations and savings banks. These Rules also included a temporary exemption that gave banks time to come into full compliance with the more narrowly-tailored exceptions from broker-dealer registration.[3] To further accommodate the banking industry's continuing compliance concerns, the Commission delayed the effective date of the bank ''broker'' and ''dealer'' rules through a series of orders that, among other things, ultimately extended the temporary exemption from the definition of ''broker'' to September 30, 2005.[4]

In previous extension orders, the Commission acknowledged ''that banks may need as much as a year to develop compliance systems to adapt to the GLBA in light of amended Rules. The Commission does not expect banks to develop compliance systems for the provisions of the GLBA discussed in the Rules until the Commission has amended the Rules.'' [5] Consistent with those statements, when the Commission proposed Regulation B in June 2004, to replace the Interim Rules, the Commission also proposed a one-year delay in the Regulation's effective date.[6]

Although the comment period for Regulation B expired on September 1, 2004,[7] the Commission has continued to receive comments. To date, the Commission has received over 120 comments on the proposal, including comments from the banking industry, banking regulators, and members of Congress. The Commission has reviewed these comments and has had further discussions with several commenters.

II. Extension of Temporary Exemption From Definition of ''Broker''

The Commission is carefully considering comments to determine what final action should be taken with regard to the Regulation B proposal. The Commission anticipates that this review process will not be completed before the exemption from the Interim Rules relating to the definition of ''broker'' expires on September 30, 2005.[8]

Therefore, the Commission finds that extending the temporary exemption for banks, savings associations, and savings banks from the definition of ''broker'' is necessary and appropriate in the public interest, and is consistent with the protection of investors. The Commission believes that extending the exemption from the definition of ''broker'' until September 30, 2006, will prevent banks and other financial institutions from unnecessarily incurring costs to comply with the statutory scheme based on the current Interim Rules and will give the Commission time to consider fully comments received on Regulation B and take any final action on the proposal as necessary, including consideration of any modification necessary to the proposed compliance date.

III. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,[9]

It is hereby ordered that banks, savings associations, and savings banks are exempt from the definition of the term ''broker'' under the Exchange Act until September 30, 2006.

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[1] As defined in Exchange Act Sections 3(a)(4) and 3(a)(5) [15 U.S.C. 78c(a)(4) and 78c(a)(5)].

[2] *See* Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001).

[3] 17 CFR 240.15a–7.

[4] *See* Exchange Act Release No. 44570 (July 18, 2001); Exchange Act Release No. 45897 (May 8, 2002); Exchange Act Release No. 46751 (Oct. 30, 2002); Exchange Act Release No. 47649 (April 8, 2003); Exchange Act Release No. 50618 (Nov. 1, 2004); and Exchange Act Release No. 51328 (March 8, 2005) (extending the exemption from the definition of ''broker'' until September 30, 2005). During this time, the Commission also extended the temporary exemption from the definition of ''dealer'' to September 30, 2003. *See* Exchange Act Release No. 47366 (Feb. 13, 2003). On February 13, 2003, the Commission adopted amendments to certain parts of the Interim Rules that define terms used in the dealer exceptions, as well as certain dealer exemptions (''Dealer Release''), *see* Exchange Act Release No. 47364 (Feb. 13, 2003), 68 FR 8686 (Feb. 24, 2003). Therefore, this order is limited to an extension of the temporary exemption from the definition of ''broker.''

[5] *See, e.g.*, Order Extending Temporary Exemption of Banks, Savings Associations, and Savings Banks from the Definitions of ''Broker'' and ''Dealer'' under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934; Notice of Intent to Amend Rules, Release No. 34–45897 (May 8, 2002), *http://www.sec.gov/rules/other/34–45897.htm.*

[6] Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682 (June 30, 2004).

[7] *See* Exchange Act Release No. 50056 (July 22, 2004) 69 FR 44988 (July 28, 2004) (extending comment period on Regulation B until September 1, 2004).

[8] In the Interim Rules, the Commission adopted Exchange Act Rule 15a–7, 17 CFR 240.15a–7, which, as proposed to be amended, would provide banks and other financial institutions until January 1, 2006, to begin complying with the GLBA. In proposing Regulation B, the Commission proposed Rule 781 as a re-designation of Rule 15a–7. *See* 17 CFR 242.781.

[9] 15 U.S.C. 78mm.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5025 Filed 9–14–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52398; File No. SR–CBOE–2005–74]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rule 8.4 Relating to Remote Market-Maker Appointments

September 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 2005, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] 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

CBOE proposes to amend CBOE Rule 8.4 relating to Remote Market-Maker appointments. The text of the proposed rule change 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend CBOE Rule 8.4 relating to Remote Market-Maker (''RMM'') appointments. Rule 8.4 provides that RMMs will have a Virtual Trading Crowd (''VTC'') Appointment, which confers the right to quote electronically in a certain number of products selected from various ''tiers''. There are five tiers that are structured according to trading volume statistics and an ''A+'' Tier which consists of two option classes—options on Standard & Poor's Depositary Receipts and options on the Nasdaq-100 Index Tracking Stock.[5] Rule 8.4(d) assigns ''appointment costs'' to products based on the tier in which they are located, and an RMM may select for each Exchange membership it owns or leases any combination of products trading on the Hybrid 2.0 Platform whose aggregate ''appointment cost'' does not exceed 1.0.

CBOE proposes to amend Rule 8.4(d) relating to the ''A+'' Tier in two respects. First, CBOE proposes to include an additional option class in the ''A+'' Tier, namely options on Diamonds (DIA). CBOE believes it is appropriate to include this option class in this tier based on its trading volume.[6]

Second, CBOE proposes to lower the ''appointment cost'' for the ''A+'' Tier from .60 to .25 for each option class in this tier. CBOE believes that an ''appointment cost'' of .25, or one quarter of a CBOE membership, is a more appropriate ''appointment cost'' for each product in the ''A+'' Tier.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular, in that it is 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] As required under Rule 19b-4(f)(6)(iii) under the Act,[11] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, the Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 51543 (April 14, 2005), 70 FR 20952 (April 22, 2005), approving SR–CBOE–2005–23.

[6] Currently, DIA options are traded on CBOE's Hybrid Trading System, but not on the Hybrid 2.0 Platform. Thus, there are no RMMs currently appointed in the DIA option class.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] *Id.*