

By the Commission.

Jonathan G. Katz,

Secretary.

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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 Act³ 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 Depository 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 Act⁷ 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

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).

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 Act⁹ 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

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.

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).

investors and the public interest. The two changes to the “A+” Tier that are described in this proposed rule change do not raise any new, unique, or substantive issues from those raised in the filing that initially established the “A+” Tier and the appointment cost for this tier.¹⁴ By lowering the “appointment cost” of the “A+” Tier, CBOE is reducing the cost to its members to trade in the products that are in this tier. For the reasons stated above, the Commission therefore designates the proposal to become operative immediately.¹⁵

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*. Please include File Number SR-CBOE-2005-74 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-74. 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-2005-74 and should be submitted on or before October 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52393; File No. SR-DTC-2005-12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Scope and Update the Description of the Security Position Reports Service

September 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on August 23, 2005, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. 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 purpose of the proposed rule change is to clarify the scope and update the description of DTC’s Security Position Reports (“SPRs”)

Service it provides to issuers, trustees, and authorized agents.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, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.³

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SPRs are reports prepared by DTC that show for each issuer whose securities are eligible for DTC’s book entry services the identity of each DTC participant having that issuer’s securities credited to its participant account as of a selected date and the quantity of securities so credited (*i.e.*, “security position”). Prior to the creation of DTC, issuers had direct access to SPR information from their transfer agents. Now, most securities are registered with the transfer agent in the name of DTC’s nominee, Cede & Co., and issuers rely on DTC to provide them with SPR information. DTC also provides SPR information to trustees and authorized third party agents (“TPAs”). These entities typically need SPR information provided by DTC in order to properly conduct proxy, record date, and voting rights-related functions.⁴

² DTC Rule 2 (“Participants and Pledges”), Section 1 authorizes DTC to provide to the issuer of any security at any time credited to the account of the participant the name of the participant and the amount of the issuer’s securities so credited. DTC is also authorized to provide similar information to any appropriate governmental authority.

³ The Commission has modified the text of the summaries prepared by DTC.

⁴ In 1979, the Commission mandated that each clearing agency make SPRs available to issuers whose securities the clearing agency holds in its name or in the name of its nominee. Securities Exchange Act Release No. 16443 (December 28, 1979), 44 FR 76777. In 1989, a DTC rule change authorized DTC to provide SPRs to resolution and indenture trustees for debt obligations on deposit at DTC. Securities Exchange Act Release No. 27426 (November 7, 1989), 54 FR 47624 [File No. SR-DTC-89-20]. TPAs are also provided with such information as a result of their role in carrying out functions on behalf of issuers or trustees. DTC is modifying its SPR process to require all TPAs that receive SPR information to agree on an annual basis to only use such information for the benefit of the

¹⁴ See *supra* note 5.

¹⁵ For purposes only of waiving the operative date of this proposal, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

¹⁷ 15 U.S.C. 78s(b)(1).