

average clearing firm per contract fee. The reference in the Fees Schedule to the \$.09 per contract credit would be deleted.

Also, the Exchange proposes to credit DPMs an amount per contract on CBOE transactions against customer and broker-dealer orders underlying P/A and P orders, and on P/A and P order transactions at other exchanges, to offset the Sales Value Fee DPMs may incur on those transactions.<sup>11</sup>

Under the current Program, the Exchange caps the amount of the credits at the amount of total fees received by the Exchange from inbound linkage transaction fees. Because the Exchange proposes to completely cover (to the extent possible) the costs incurred by DPMs in executing such transactions, the Exchange proposes to delete this cap.<sup>12</sup>

As under the current Program, a DPM would be expected to reimburse the Exchange to the extent that the funds received by the DPM via the Program exceed the DPM's actual costs incurred in executing Linkage-related transactions.<sup>13</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>15</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>11</sup> The Sales Value Fee is assessed by CBOE to each member for sales of securities on CBOE with respect to which CBOE is obligated to pay a fee to the SEC under Section 31 of the Exchange Act. Other exchanges refer to this fee by different names. See Section 6 of the CBOE Fees Schedule.

<sup>12</sup> The Exchange notes that a Linkage Plan amendment has been separately submitted to the Commission to permit an Exchange account, instead of the DPM's account, to be used by the Exchange to send and respond to P/A orders ("Linkage Account Plan Amendment"). Pursuant to Section 21 of the Fees Schedule, the DPM Linkage Fee Credit Program with respect to P/A orders will expire upon the earlier of: (i) 30 days after Commission approval of the Linkage Account Plan Amendment; or (ii) July 31, 2006, which is the expiration date of the Linkage fees pilot program.

<sup>13</sup> The Exchange intends to monitor on a regular basis to ensure that no DPM receives funds via the Program in amounts that exceed the DPM's actual costs in executing Linkage-related transactions.

<sup>14</sup> 15 U.S.C. 78f(b).

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

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has 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 has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>16</sup> and paragraph (f)(2) of Rule 19b-4 thereunder<sup>17</sup> because it establishes or changes a due, fee, or other charge applicable only to members of the Exchange. 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2006-44 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-44. 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 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-2006-44 and should be submitted on or before June 22, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-8476 Filed 5-31-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53869; File No. SR-CBOE-2006-38]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Regarding Transfer of Designated Primary Market Maker Appointments

May 25, 2006.

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 April 17, 2006, 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, II, and III below, which Items have been prepared by CBOE. On May 11, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule

<sup>18</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 and superseded the original filing in its entirety. In Amendment No. 1, CBOE corrected a reference in the rule text and elaborated on the purpose of and rationale for the proposed rule change.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

change, as amended, from interested persons.

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

CBOE proposes to amend its rules relating to the transfer of Designated Primary Market Maker ("DPM") appointments. The text of the proposed rule change, as amended, is available on CBOE's Web site (<http://www.cboe.com>), at CBOE's principal office, 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 proposed rule change and discussed any comments it had received on the proposed rule change. 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 Exchange rules applicable to the transfer of DPM appointments between CBOE members, which is governed by CBOE Rule 8.89. Generally, any DPM proposing a sale, transfer, or assignment of any ownership interest or a change to the DPM's capital structure, voting authority, or distribution of profits or losses (collectively, a "transfer proposal") must provide the appropriate Exchange committee with the specifics and terms of the transfer proposal in a form and manner specified under CBOE Rule 8.89(c). The appropriate Exchange committee then will undergo a review process, which includes a publication of notice of the transfer proposal and a subsequent publication of the notice of the decision by the committee on the transfer proposal.<sup>4</sup> Currently, the appropriate Exchange committee that reviews transfer proposals under CBOE Rule 8.89 is the Allocation Committee.

The Exchange proposes to eliminate section (f) of CBOE Rule 8.89, which subjects any transfer proposal decision made by the appropriate Exchange committee ("transfer proposal decision") to a 10-day review period in

which any transfer proposal decision may be directly reviewed by the Board of Directors upon: (1) A written application by a party claiming to be aggrieved<sup>5</sup> by the DPM transfer decision, or (2) a request for review by any five Directors.

The Exchange believes that, with the expiration of the DPM appointment transfer fee in June 2004<sup>6</sup> and the fact that DPM transfers, in general, have become more routine, the Board review process under CBOE Rule 8.89(f) is no longer necessary. The Exchange also believes that the elimination of CBOE Rule 8.89(f) will improve the efficiency of the Exchange's decision-making processes. Currently, because of the review process under CBOE Rule 8.89(f), a memo is forwarded to the Board of Directors after each decision regarding a transfer proposal is made. This requires Directors to take time to review each of these matters so that they can determine whether to make a request for review of the decision by the Board. Because transfer proposal decisions have become more routine, the Exchange no longer sees a need to have Directors devote special attention to these decisions or for there to be a special review process for these decisions that is different from the review processes and procedures that are generally applicable to other Exchange decisions.

Further, any member aggrieved by a decision regarding a transfer proposal decision could still seek a review of the decision through the hearing and review process provided for under Chapter XIX of CBOE's rules.<sup>7</sup> In any such appeal proceeding under Chapter XIX, the decision regarding a transfer proposal by the appropriate Exchange committee under CBOE Rule 8.89 would be subject to review by the CBOE Appeals Committee. Additionally, the Appeals Committee decision in the matter would be subject to review by the CBOE Board of Directors on its own motion, or could be appealed to the Board of Directors, pursuant to CBOE Rule 19.5.

Finally, as a matter of housekeeping, the Exchange proposes to delete Interpretation and Policy .02 of CBOE Rule 8.89, which provided for the application of a transfer fee on any DPM appointment transfer. As this provision

<sup>5</sup> Under CBOE Rule 8.89, a person must be "aggrieved" as described in Chapter XIX of Exchange Rules.

<sup>6</sup> Until it expired on June 30, 2004, Interpretation and Policy .02 of CBOE Rule 8.89 applied a transfer fee to certain types of DPM transfers.

<sup>7</sup> Chapter XIX of CBOE Rules governs the process by which persons, including members, claiming to be economically aggrieved by Exchange action may seek a review of such a decision.

expired on June 30, 2004, continued inclusion in CBOE Rules is unnecessary.

##### **2. Statutory Basis**

Because it believes that the proposed rule change, as amended, will make the review process for DPM appointment transfer proposals more efficient, the Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5),<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and 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, as amended, 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, as amended.

### **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 CBOE consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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

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

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

<sup>4</sup> See CBOE Rules 8.89(d) and (e).

- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-CBOE-2006-38 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-38. 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 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-2006-38 and should be submitted on or before June 22, 2006.

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

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-8480 Filed 5-31-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53859; File No. SR-CHX-2006-18]

### Self-Regulatory Organization; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Waiving a Notice Provision Relating to the Renewal of Trading Permits

May 24, 2006.

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 May 10, 2006, the Chicago Stock Exchange, Inc. ("CHX" 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 CHX. 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 amend its rules to waive for 2006 the 60-day notice requirement relating to the cancellation of trading permits that were issued as a result of the Exchange's demutualization. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm) 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 CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

At the time of the Exchange's demutualization on February 9, 2005, the Exchange issued trading permits to

each member that held a CHX membership on the previous day. Pursuant to CHX Article II, Rule 3, each of these trading permits had a one-year term (through February 8, 2006) and was to be automatically renewed at the end of that term for another year (through February 8, 2007), unless the participant<sup>3</sup> gave the Exchange at least 60 days' notice that the trading permit should be allowed to expire.

Although some Exchange participants that wanted certain trading permits to expire provided the 60 days' notice contemplated by the Exchange's rules, a few participants did not. Because this is the first year of this new requirement and it appears to have created confusion among some of the Exchange's participants, the Exchange believes that it would be appropriate to waive the 60-day notice requirement in 2006. Therefore, the Exchange proposes Interpretation and Policy .01 to CHX Article II, Rule 3, which would allow for 2006 a trading permit to expire if a participant provided notice of waiver of renewal with respect to such trading permit during the 60 days preceding February 9, 2006, even though the participant did not provide the full 60 days' prior notice required by the Exchange's rules.

###### 2. Statutory Basis

The CHX believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>4</sup> The CHX believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>5</sup> in that it is 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 by permitting the Exchange to waive, on a one-time basis, a rule provision relating to the renewal of trading permits that caused confusion among some of the Exchange's participants.

##### 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.

<sup>3</sup> See CHX Article I, Rule 1(l) for the definition of a "participant."

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

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

<sup>10</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.