

be submitted on or before February 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51027; File No. SR-CBOE-2005-07]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Fees for Transactions in Options on the Standard & Poor's Depository Receipts®

January 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 January 11, 2005, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") 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 Exchange. 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 is proposing to amend its Fee Schedule to establish fees for transactions in options on the Standard & Poor's Depository Receipts® ("SPDRs®"). The text of the proposed rule change 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, 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 Exchange 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 Fee Schedule to establish fees for transactions in options on SPDRs.

The transaction fee for customer orders in options on SPDRs will be \$.15 per contract.<sup>3</sup> All other transaction fees for options on SPDRs will be equal to the transaction fees currently applied to options on the Nasdaq-100 Index Tracking Stock ("QQQ"). Specifically, market-maker and DPM transaction fees will be \$.24 per contract, member firm proprietary transaction fees will be \$.20 for facilitation of customer orders and \$.24 for non-facilitation orders, broker-dealer transaction fees will be \$.25 per contract, non-member market-maker transaction fees will be \$.26 per contract, and linkage fees will be \$.24 per contract.

As per the current CBOE Fee Schedule, the floor brokerage fee for options on SPDRs will be \$.04 per contract and \$.02 per contract for crossed orders. The RAES Access Fee will not apply as options on SPDRs will trade on the Exchange's Hybrid Trading System. The \$.22 marketing fee will apply to market-maker, DPM and e-DPM transactions in options on SPDRs.<sup>4</sup>

The proposed rule change is intended to establish fees for CBOE's options on SPDRs that are competitive with the fees charged by other exchanges for transactions in options on SPDRs.

##### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(4) of the Act,<sup>5</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

#### 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 rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder. 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 No. SR-CBOE-2005-07 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-2005-07. 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 Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

<sup>16</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> Under the current CBOE Fee Schedule, the customer transaction fee for all options on exchange-traded funds (other than QQQ and DIA options) is \$.15 per contract.

<sup>4</sup> See File No. SR-CBOE-2005-05.

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 19b-4(f)(2).

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-2005-07 and should be submitted on or before February 14, 2005.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51041; File No. SR-CBOE-2005-06]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to Position Limits and Exercise Limits for Options on Standard and Poor's Depository Receipts®

January 14, 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 January 11, 2005, 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is

granting accelerated approval of the proposed rule change.

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

The CBOE proposes to amend CBOE Rule 4.11 to increase position limits and exercise limits for options on Standard & Poor's Depository Receipts® ("SPDRs®"). 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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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 Exchange began trading options on SPDRs on January 10, 2005 on the CBOE Hybrid Trading System. The Exchange proposes to amend Interpretation and Policy .07 to CBOE Rule 4.11 to increase position limits and exercise limits for options on SPDRs from 75,000 to 300,000 contracts on the same side of the market.

Given the expected institutional demand for options on SPDRs, the CBOE believes the current equity position limit of 75,000 contracts to be too low and a deterrent to the successful trading of the product. Options on SPDRs are 1/10th the size of options on the Standard and Poor's 500 Index (SPX). Thus, a position limit of 75,000 contracts in SPDR options is equivalent to a 7,500 contract position limit in SPX options. Traders who trade SPDR options to hedge positions in SPX options are likely to find a position limit of 75,000 contracts in SPDR options too restrictive, which may adversely affect the Exchange's ability to provide liquidity in this product.

Comparable products such as options on the Nasdaq-100 Index Tracking Stock

("QQQ") and the DIAMONDS Trust ("DIA") are subject to a 300,000 contract limit.<sup>3</sup> The Exchange proposes that options on SPDRs similarly be subject to position limits and exercise limits of 300,000 contracts.<sup>4</sup> The Exchange believes that increasing position limits and exercise limits for SPDR options would lead to a more liquid and competitive market environment for SPDR options that would benefit customers interested in this product.

Consistent with the reporting requirement for QQQ and DIA options, the Exchange would require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the SPDR option class, for its own account or for the account of a customer report certain information.<sup>5</sup> This information would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including Designated Primary Market-Makers) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts would remain at this level for SPDR options.<sup>6</sup>

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms 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 CBOE does not believe that the proposed rule change will impose any

<sup>3</sup> See Securities Exchange Act Release No. 45309 (January 18, 2002), 67 FR 3757 (January 25, 2002) (increase of position limits and exercise limits to 300,000 for QQQ options); and Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (increase of position limits and exercise limits to 300,000 for DIA options).

<sup>4</sup> Pursuant to Interpretation and Policy .02 to CBOE Rule 4.12, the exercise limit established under Rule 4.12 for SPDR options shall be equivalent to the position limit prescribed for SPDR options in Interpretation and Policy .07 under Rule 4.11.

<sup>5</sup> See CBOE Rule 4.13(b).

<sup>6</sup> See CBOE Rule 4.13(a).

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

<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.