Dated: July 26, 2005.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52101; File No. SR–CBOE–2004–86]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Modified ROS Opening Procedure

July 21, 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 December 15, 2004, 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 the Exchange. On July 5, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to revise the modified Rapid Opening System (''ROS'') opening procedure set forth in CBOE Rule 6.2A.03 to provide a greater opportunity for market participants to respond to order imbalances in the electronic book and to move the cut-off time for the submission of all orders for participation in the modified ROS opening procedure from 8:28 a.m. (CT) to 8:25 a.m. (CT). Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

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

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4, dated July 1, 2005 (''Amendment No. 1''). Amendment No. 1 replaced the original filing in its entirety.

Rule 6.2A. Rapid Opening System

This rule has no applicability to series trading on the CBOE Hybrid Opening System. Such series will be governed by Rule 6.2B.

(a)—(d) No change.

* * * Interpretation and Policies:

.01–.02 No change.

.03 Modified ROS Opening Procedure For Calculation of Settlement Prices of Volatility Indexes.

All provisions set forth in Rule 6.2A and the accompanying interpretations and policies shall remain in effect unless superseded or modified by this Rule 6.2A.03. To facilitate the calculation of a settlement price for futures and options contracts on volatility indexes, the Exchange shall utilize a modified ROS opening procedure for any index option series with respect to which a volatility index is calculated (including any index option series opened under Rule 6.2A.01). This modified ROS opening procedure will be utilized only on the final settlement date of the options and futures contracts on the applicable volatility index in each expiration month.

The following provisions shall be applicable when the modified ROS opening procedure set forth in this Rule 6.2A.03 is in effect for an index option with respect to which a volatility index is calculated:

(i) [a]*A*ll orders (including public customer, broker-dealer, Exchange Market-Maker and away Market-Maker and specialist orders), other than contingency orders, will be eligible to be placed on the Electronic Book for those option contract months whose prices are used to derive the volatility indexes on which options and futures are traded, for the purpose of permitting those orders to participate in the ROS opening price calculation for the applicable index option series[;].

(ii) [a]*A*ll Market-Makers, including any LMMs and SMMs, if applicable, who are required to log on to ROS or RAES for the current expiration cycle shall be required to log on to ROS during the modified ROS opening procedure if the Market-Maker is physically present in the trading crowd for that index option class[;].

(iii) [i]*I*f the ROS system is implemented in an option contract for which LMMs have been appointed, the LMMs will collectively set the Autoquote values that will be used by ROS[;].

(iv) ROS contracts to trade for that index option series will be assigned equally, to the greatest extent possible, to all logged-on Market-Makers, including any LMMs and SMMs if applicable[;].

(v) All index option orders for participation in the modified ROS opening procedure that are related to positions in, or a trading strategy involving, volatility index options or futures, and any change to or cancellation of any such order

(A) must be received prior to 8:00 a.m. (CT), and

(B) may not be cancelled or changed after 8:00 a.m. (CT), unless the order is not executed in the modified ROS opening procedure and the cancellation or change is submitted after the modified ROS opening procedure is concluded (provided that any such order may be changed or cancelled after 8:00 a.m. (CT) and prior to 8:25 a.m. (CT) in order to correct a legitimate error, in which case the member submitting the change or cancellation shall prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and shall file a copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange).

In general, the Exchange shall consider index option orders to be related to positions in, or a trading strategy involving, volatility index options or futures for purposes of this Rule 6.2A.03(v) if the orders possess the following three characteristics:

(i) The orders are for options series with the expiration month that will be used to calculate the settlement price of the applicable volatility index option or futures contract.

(ii) The orders are for options series spanning the full range of strike prices in the appropriate expiration month for options series that will be used to calculate the settlement price of the applicable volatility index option or futures contract, but not necessarily every available strike price.

(iii) The orders are for put options with strike prices less than the ''at-the-money'' strike price and for call options with strike prices greater than the ''at-the-money'' strike price. The orders may also be for put and call options with ''at-the-money'' strike prices.

Whether index option orders are related to positions in, or a trading strategy involving, volatility index options or futures for purposes of this Rule 6.2A.03(v) depends upon specific facts and circumstances. Order types other than those provided above may also be deemed by the Exchange to fall within this category of orders if the Exchange determines that to be the case *based upon the applicable facts and circumstances.*

The provisions of this Rule 6.2A.03(v) may be suspended by two Floor Officials in the event of unusual market conditions.

(v*i*) [a]*A*ll *other index option* orders for participation in the modified ROS opening procedure, and any change to or cancellation of any such order, must be received prior to *8:25 a.m.* [8:28 a.m.] (C[S]T) in order to participate at the ROS opening price for *the applicable* [that] index option series[;]*.*

(vi*i*) [a]*A*ll orders for participation in the modified ROS opening procedure must be submitted electronically, except that Market-Makers on the Exchange's trading floor may submit paper tickets for market orders only[; and]*.*

(vii*i*) [until the Exchange implements a] *The* ROS system [change that] *shall* automatically generate[s] cancellation orders *immediately prior to the opening of the applicable index option series* for Exchange Market-Maker, away Market-Maker, specialist, and broker dealer orders which remain on the Electronic Book following the modified ROS opening procedure[, any such orders that were entered in the Electronic Book but were not executed in the modified ROS opening procedure must be cancelled immediately following the opening of the applicable option series].

(ix) Any imbalance of contracts to buy over contracts to sell in the applicable index option series, or vice versa, as indicated on the Electronic Book, will be published as soon as practicable after 8 a.m. (CT) and thereafter at approximately 8:20 a.m. (CT) on days that the modified ROS opening procedure is utilized.

* * * * *

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Current CBOE Rule 6.2A.03 sets forth certain procedures that modify the normal operation of ROS [4] on the final settlement date of futures and options contracts on volatility indexes.[5] The final settlement date of futures and options contracts on volatility indexes occurs on the Wednesday that is immediately prior to the third Friday of the month that immediately precedes the month in which the options used in the calculation of that index expire (''Settlement Date''). The proposed rule change would implement additional procedures for certain option orders that are entered on the Exchange's electronic book on the Settlement Date.

The modified ROS opening procedure permits all orders (including public customer, broker-dealer, CBOE market-maker and away market-maker and specialist orders), other than contingency orders, to be eligible to be placed on the book on the Settlement Date solely for the purpose of the modified ROS opening procedure. These orders may be placed on the book in those index option contract months whose prices are used to derive the volatility indexes on which options and futures are traded. For example, since the launch of futures on the CBOE Volatility Index (''VIX futures''), market participants actively trading in VIX futures have taken advantage of the modified ROS opening procedure to place SPX option orders on the book on the Settlement Date to unwind hedge strategies involving SPX options that were initially entered into upon the purchase or sale of VIX futures. In particular, the commonly-used hedge for VIX futures involves holding a portfolio of the SPX options that will be used to calculate the settlement value of the VIX futures contract on the Settlement Date. Traders holding hedged VIX futures positions to settlement can be expected to trade out of their SPX options on the Settlement Date. Traders who hold short, hedged VIX futures would liquidate that hedge by selling their SPX options, while traders holding long, hedged VIX futures would liquidate their hedge by buying SPX options. In order to seek convergence with the VIX futures final settlement value, these traders would be expected to liquidate their hedges by submitting market orders or limit orders[6] in the appropriate SPX option series during the SPX opening on the Settlement Date of the VIX futures contract. To the extent (i) traders who are liquidating hedges predominately are on one side of the market (*e.g.*, seek to buy the particular SPX options) and (ii) those traders' orders predominate over other orders during the SPX opening on Settlement Date, trades to liquidate hedges may contribute to an order imbalance during the SPX opening on Settlement Date. The purpose of the proposed rule filing is to implement changes to the modified ROS opening procedure that are intended to encourage additional participation in the modified ROS opening procedure among market participants who may wish to place off-setting orders against the imbalances. Information regarding the imbalances would be published on the Exchange's Web site at least two times prior to 8:25 a.m. (CT) on the Settlement Date. The first publication will occur as soon as practicable after 8 a.m. (CT) and the second publication will occur approximately at 8:20 a.m. (CT).

To encourage more participation in the volatility index futures and options settlement process, proposed CBOE Rule 6.2A.03(v) would require that all index option orders for participation in the modified ROS opening that are related to positions in, or a trading strategy involving, volatility index options or futures, and any changes or cancellations to these orders, be received prior to 8 a.m. (CT). Under the proposed rule change, in general, the

[4] ROS is the Exchange's automated system for opening certain classes of options at the beginning of the trading day or for re-opening those classes of options during the trading day. The procedures related to ROS are set forth in CBOE Rule 6.2A. The modified ROS opening procedure set forth in Rule 6.2A.03 modifies the general ROS opening procedures for index options that are used to calculate a volatility index to facilitate the settlement of futures contracts and options contracts on those volatility indexes.

[5] Volatility indexes provide investors with up-to-the-minute market estimates of expected near-term volatility of the prices of a broad-based group of stocks by extracting volatilities from real-time index option bid/ask quotes. Volatility indexes are calculated using real-time quotes of the nearby and second nearby index puts and calls on established broad-based market indexes. For example, the CBOE Volatility Index measures the near-term volatility of options on the S&P Index (''SPX'') and the CBOE DJIA Volatility Index measures the near-term volatility of options on the Dow Jones Industrial Average (''DJX''). Futures contracts on the CBOE Volatility Index and the CBOE DJIA Volatility Index are currently trading on the Exchange's wholly-owned subsidiary, CBOE Futures Exchange, LLC. The Commission has approved for trading on the Exchange option contracts on volatility indexes and the Exchange may also list those contracts for trading.

[6] The Exchange understands that some market participants choose to unwind their hedges using limit orders to ensure that the hedge is effected at a certain price.

Exchange would consider index option orders to be related to positions in, or a trading strategy involving, volatility index options or futures for purposes of proposed CBOE Rule 6.2A.03(v) if the orders possess the following three characteristics:

(i) The orders are for options series with the expiration month that will be used to calculate the settlement price of the applicable volatility index option or futures contract.

(ii) The orders are for options series spanning the full range of strike prices in the appropriate expiration month for options series that will be used to calculate the settlement price of the applicable volatility index option or futures contract, but not necessarily every available strike price.

(iii) The orders are for put options with strike prices less than the ''at-the-money'' strike price and for call options with strike prices greater than the ''at-the-money'' strike price. The orders may also be for put and call options with ''at-the-money'' strike prices.

Whether index option orders are related to positions in, or a trading strategy involving, volatility index options or futures for purposes of proposed CBOE Rule 6.2A.03(v) depends upon specific facts and circumstances. Under the proposed rule change, order types other than those provided above may also be deemed by the Exchange to fall within this category of orders if the Exchange determines that to be the case based upon the applicable facts and circumstances.

The proposed rule change also provides a limited exception that would permit cancellations and changes to these booked orders solely to correct a legitimate error (*e.g.*, side, size, symbol, price or duplication of an order). Under the proposed rule change, the member submitting the change or cancellation would be required to prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and would be required to file a copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange. In addition, two Floor Officials would have the ability to suspend proposed CBOE Rule 6.2A.03(v) in the event of unusual market conditions. For example, if a significant market event occurs between 8 a.m. (CT) and 8:25 a.m. (CT), Floor Officials may determine to suspend the rule provision in the interest of maintaining a fair and orderly market so that limit orders placed in the book to unwind hedged volatility index futures positions are not unfairly disadvantaged as a result of a significant market move that would result in limit orders going unexecuted.[7]

Separately, the Exchange proposes to move the cut-off time for the submission of all orders for participation in the ROS opening on Settlement Date mornings from 8:28 a.m. (CT) to 8:25 a.m. (CT). Lead Market-Makers, who collectively set the Autoquote values for the SPX options on the Settlement Date, have noted to the Exchange that they desire additional time to review the order imbalances on the book in order to set the Autoquote values that are used in the modified ROS opening procedure. The Exchange believes that the earlier cut-off time will be beneficial to all index option classes that are used to settle volatility index futures and options.

The Exchange notes that since the last day of trading in volatility index futures in the applicable expiring month occurs on the day before Settlement Date, holders of open volatility index futures are generally aware before 8 a.m. (CT) of the related index option series that they would need to place on the book in order to adequately unwind their hedges. Therefore, the Exchange believes the index option market participants who would be subject to these proposed rules would not be materially affected by the 8 a.m. (CT) cut-off time.

The Exchange also notes that it has filed with the Commission surveillance procedures to monitor whether index option orders that are subject to the proposed rule change are submitted for placement on the electronic book in accordance with the proposed rule.

In addition, the Exchange is making certain technical changes to current CBOE Rule 6.2A.03 to change the time standards reflected in the rule from CST to CT, since Chicago is in the Central Time zone. The Exchange is also revising the rule language in current CBOE Rule 6.2A.03(viii) to reflect that the Exchange has recently implemented a system change to ROS that automatically generates cancellation orders for Exchange market-maker, away market-maker, specialist, and broker dealer orders which remain on the electronic book following the modified ROS opening procedure. Therefore, members will no longer need to submit cancellations for these orders following the opening of the applicable index option series.

2. Statutory Basis

The Exchange believes the proposed rule change will improve the modified ROS opening procedure by exposing for a longer period of time order imbalances resulting from the unwinding of hedged volatility index futures positions. The Exchange believes this will allow market participants a greater opportunity to review these order imbalances and to place off-setting orders in the book, thereby resulting in the reflection of additional market participant interest in the applicable index option opening. For these reasons, 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) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[9] requirements 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

The Exchange believes that the proposed rule change does not 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

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 the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change 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

[7] *Id.*

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

[9] 15 U.S.C. 78(f)(b)(5).

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
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–86 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–2004–86. 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. Copies of such filing also will be available for inspection and copying at the principal office of 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–2004–86 and should be submitted on or before August 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4018 Filed 7–27–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52111; File No. SR–CBOE–2005–52]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of Its Prospective Fee Reduction Program

July 22, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 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, II, and III below, which items have been prepared by CBOE. 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 its Fees Schedule to extend the Prospective Fee Reduction Program through the close of the current Exchange fiscal year on December 31, 2005. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

CHICAGO BOARD OPTIONS EXCHANGE, INC. FEES SCHEDULE [MAY 23]*JUNE 30*, 2005

1.–4. Unchanged.

Footnotes: (1)–(16) Unchanged.

5.–18. Unchanged.

19. PROSPECTIVE FEE REDUCTION PROGRAM

Fee reductions will be in effect August 1, 2004 *through December 31, 2005* under the following scenarios:

If CBOE volume exceeds predetermined average contracts per day (CPD) thresholds at the end of any month on a fiscal year-to-date (YTD) basis, Market-Maker and DPM transaction and floor brokerage fees will be reduced in the subsequent month according to the schedule presented below:

FY05 YTD avg. CPD	Fees discount (percent)	Equities market-maker reductions	QQQQ/*SPDR*/Index market-maker/*DPM* reductions	*Equities* DPM trans. fees reductions	Floor brokerage reductions
1,300,000	10	$.022	$.024	$.012	$.004
1,400,000	15	.033	.036	.018	.006
1,500,000	20	.044	.048	.024	.008
1,600,000	25	.055	.060	.030	.010
1,700,000	30	.066	.072	.036	.012
1,800,000	35	.077	.084	.042	.014
1,900,000	40	.088	.096	.048	.016
2,000,000	45	.099	.108	.054	.018

20.–23. Unchanged.

Remainder of Fee Schedule—Unchanged.

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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 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.

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.