

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53377; File No. SR-CBOE-2005-112)

February 27, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Seeking Permanent Approval of a Pilot Program Relating to Market-Maker Access to the Exchange's Hybrid Automatic Execution System

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 December 30, 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, 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 proposes to make permanent its pilot program in CBOE Rule 6.13 relating to market-maker ("MM") access to the Exchange's automatic execution system. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange'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 those statements may be examined at the places specified in

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In July 2004, the Exchange implemented on a pilot basis CBOE Rule 6.13(b)(i)(C)(iii), which relates to the frequency with which certain market participants may submit orders for automatic execution through the Exchange's Hybrid Trading System ("Hybrid").<sup>3</sup> The Exchange has subsequently extended the pilot program, which expires on October 12, 2006, on two occasions.<sup>4</sup> CBOE Rule 6.13(b)(i)(C)(iii) currently provides in relevant part:

(iii) 15-Second Limitation: With respect to orders eligible for submission pursuant to paragraph (b)(i)(C)(ii), members shall neither enter nor permit the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The appropriate FPC may shorten the duration of this 15-second period by providing notice to the membership via a Regulatory Circular that is issued at least one day prior to implementation. The effectiveness of this rule shall terminate on October 12, 2006.

Upon approval of the pilot program, the Exchange began allowing orders from options exchange MMs to be eligible for automatic execution, subject to the 15-second limitation

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<sup>3</sup> See Securities Exchange Act Release No. 50005 (July 12, 2004), 69 FR 43032 (July 19, 2004) (SR-CBOE-2004-33) (approving the pilot program).

<sup>4</sup> See Securities Exchange Act Release Nos. 51030 (January 12, 2005), 70 FR 3404 (January 24, 2005) (SR-CBOE-2004-91) (extending the pilot program until October 12, 2005); and 52494 (September 22, 2005), 70 FR 56943 (September 29, 2005) (SR-CBOE-2005-70) (extending the pilot program until October 12, 2006).

described above.<sup>5</sup> The Exchange believes that the pilot program has been successful and has helped to contribute to the maintenance of efficient markets and to attract MM volume to the Exchange. Given this success, the Exchange is requesting permanent approval of the pilot program.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>6</sup> 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.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices<sup>9</sup> 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 not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>5</sup> CBOE Rule 6.13(b)(i)(C)(ii) governs the submission of orders from MMs (paragraph (C)(ii)(A)) and stock exchange specialists (paragraph (C)(ii)(B)). It should be noted that, pursuant CBOE Rule 6.13(b)(i)(C)(iii), the floor procedures committees ("FPCs") determined to shorten to 5 seconds (from 15 seconds) the period required between entry of multiple market-maker orders (including non-CBOE MM orders) on the same side of the market in an option class for an account or accounts of the same beneficial owner using Hybrid. This change went into effect on July 18, 2005 and was announced to the membership via Regulatory Circular RG05-61.

<sup>6</sup> 15 U.S.C. 78a *et seq.*

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> At the request of the Exchange, the Commission staff has added "and practices," which was inadvertently omitted from the proposed rule change. Telephone conversation between Jennifer M. Lamie, Managing Senior Attorney, CBOE, and Kim M. Allen, Special Counsel, Division of Market Regulation, Commission, on February 23, 2006.

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 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-2005-112 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-2005-112. 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. 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-2005-112 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Nancy M. Morris  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).