

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52173; File No. SR-CBOE-2005-51)

July 29, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

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 June 30, 2005, the Chicago Board Options Exchange, Incorporated ("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 substantially prepared by the CBOE. On July 26, 2005, the CBOE 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 change, as amended, from interested persons.

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

The CBOE proposes to amend its rules to conform to recent proposed Intermarket Linkage Plan ("Plan") changes relating to "trade and ship" and "book and ship" concepts. The text of the proposed rule change is available on the CBOE's Web site (<http://www.cboe.com>), at CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

<sup>3</sup> See Form 19b-4 dated July 26, 2005 ("Amendment No. 1"). In Amendment No. 1, CBOE revised the rule text to use terms consistent with CBOE's current rules and made certain clarifying changes to the purpose section.

## 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 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.

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

#### 1. Purpose

The CBOE is proposing to amend its rules to conform to recent proposed changes governing the operation of the Intermarket Linkage, as set forth in Plan Amendment No. 15. Specifically, the CBOE is proposing that: (i) an exchange may trade an order at a price that is one-tick inferior to the NBBO if a linkage order<sup>4</sup> is transmitted to the NBBO market(s) to satisfy all interest at the NBBO price ("trade and ship" concept); and (ii) an exchange may book an order that would lock another exchange if a linkage order is sent to such other exchange to satisfy all interest at the lock price ("book and ship" concept). Under the trade and ship proposal, any execution received from the NBBO market must (pursuant to agency obligations) be reassigned to the customer order that is underlying the linkage order that was transmitted to "take out" the NBBO market. Examples of the trade and ship and book and ship concepts are below:

Trade and Ship Example. The CBOE is disseminating an offer of \$2.00 for 100

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<sup>4</sup> A linkage order is a certain type of immediate or cancel order that is routed through the Linkage facility and is defined in Section 2(16) of the Plan.

contracts. Another participating exchange (“Exchange B”) is disseminating the national best offer of \$1.95 for 10 contracts. No other market is at \$1.95. CBOE receives a 100-contract customer buy order to pay \$2.00. Under this proposal, CBOE could execute 90 contracts (or 100 contracts) of the customer order at \$2.00 provided CBOE simultaneously transmits a 10-contract Principal Acting as Agent Order (“P/A Order”) to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill at \$1.95 and 90 contracts at \$2.00 (if the customer order was originally filled in its entirety at \$2.00, an adjustment would be required to provide the customer with the \$1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.

Book and Ship Example. CBOE is disseminating a \$1.85 - \$2.00 market. Exchange B is disseminating a \$1.80 - \$1.95 market. The \$1.95 offer is for 10 contracts. No other market is at \$1.95. CBOE receives a customer order buy 100 contracts at \$1.95. Under this proposal, CBOE could book 90 contracts of the customer buy order at \$1.95 provided CBOE simultaneously transmitted a 10-contract P/A Order to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill and the rest of the customer’s order will be displayed as a \$1.95 bid on CBOE. The national best offer would likely be \$2.00. As proposed, this would not be deemed a “locked” market for purposes of the Plan.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

the proposed rule change should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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

This 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 CBOE 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, 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-51 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-2005-51. 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 the 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-2005-51 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>7</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).