

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52494; File No. SR-CBOE-2005-70)

September 22, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend a Pilot Program Relating to Market-Maker Access to the 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 September 12, 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 the Exchange. The Exchange has designated this proposal as “non-controversial” pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission.<sup>5</sup> 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 extend the pilot program in CBOE Rule 6.13 relating to market-maker access to the Exchange’s automatic execution system until October 12, 2006. No

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The Exchange asked the Commission to waive the five business day pre-filing notice requirement. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). The Commission is exercising its authority to waive the five business day pre-filing notice requirement and notes that the Exchange provided the Commission with four business days’ notice.

other changes are being made to the pilot program. 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 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

In 2004, the Commission approved on a pilot basis, CBOE Rule 6.13(b)(i)(C)(iii) ("Rule") relating to the frequency with which certain market participants could submit orders for execution through the Exchange's Hybrid Trading System ("Hybrid").<sup>6</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

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<sup>6</sup> See Securities Exchange Act Release No. 50005 (July 12, 2004), 69 FR 43032 (July 19, 2004) (SR-CBOE-2004-33). The pilot program has been extended once. See Securities Exchange Act Release No. 51030 (January 12, 2005), 70 FR 3404 (January 24, 2005) (SR-CBOE-2004-91) (extension of the pilot program until October 12, 2005).

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, 2005.

Upon approval of the Rule, the Exchange began allowing orders from options exchange market-makers to be eligible for automatic execution subject to the 15-second limitation described above.<sup>7</sup> As the pilot period expires on October 12, 2005, the Exchange proposes to extend the pilot program. Given the success of the pilot program in attracting market-maker volume to the Exchange, the Exchange proposes to extend the pilot program's duration an additional year, until October 12, 2006.

## 2. Statutory Basis

The Exchange believes that the extension of the pilot program will allow the Exchange to continue to provide auto-ex access to all market-makers. Accordingly, the Exchange believes the proposed rule change is consistent with the Act<sup>8</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>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the

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<sup>7</sup> CBOE Rule 6.13(b)(i)(C)(ii) governs the submission of orders from market-makers (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 market-maker 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>8</sup> 15 U.S.C. 78a et seq.

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

Section 6(b)(5)<sup>10</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, 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.

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

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

#### 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-2005-70 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-2005-70. 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 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-2005-70 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>13</sup>

Jonathan G. Katz  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).