

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51407; File No. SR-CBOE-2005-16)

March 22, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated to Extend a Pilot Program Relating to Margin Requirements for Certain Complex Options Spreads

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 February 7, 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 and II below, which Items have been prepared primarily by the CBOE. Pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ CBOE has designated this proposal as non-controversial, which renders the proposed rule change effective immediately upon filing. 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 extend, until February 7, 2006, a pilot program permitting an interpretation to CBOE Rule 12.3, Margin Requirements, relating to margin requirements for certain complex option spreads. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.⁵

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

1. Purpose

On August 8, 2003, the Commission approved on a one-year pilot basis ("Pilot") a CBOE Regulatory Circular setting forth an interpretation of CBOE's current margin requirements for certain complex option spreads.⁶ CBOE subsequently submitted two additional filings relating to the Pilot – one to extend the Pilot for an additional six months,⁷ which was effective upon filing with the Commission,⁸ and another proposing permanent implementation of the margin requirements covered by the Pilot.⁹ In this filing, CBOE has requested an additional extension of the Pilot, until February 7, 2006, or until such time as the Commission has approved CBOE's request for

⁵ The Commission has modified parts of these statements.

⁶ See Securities Exchange Act Release No. 48306 (August 8, 2003), 68 FR 48974 (approving SR-CBOE-2003-24). Regulatory Circular RG03-66 was issued by CBOE following the Commission's approval of SR-CBOE-2003-24.

⁷ See SR-CBOE-2004-56.

⁸ See Securities Exchange Act Release No. 50164 (August 6, 2004), 69 FR 50405 (August 16, 2004) (approving SR-CBOE-2004-56). Regulatory Circular RG03-66 was reissued as Regulatory Circular RG04-90.

⁹ See SR-CBOE-2004-53.

permanent implementation of the margin requirements on certain complex option spreads, whichever occurs sooner.

CBOE is proposing an extension of the Pilot so that it may continue in effect while the Commission considers CBOE's proposal for permanent implementation. As such, CBOE proposes to reissue the Regulatory Circular with the new Pilot expiration date. CBOE has received no negative comments concerning Regulatory Circulars RG03-66 or RG04-90 since they were issued, nor is CBOE aware of any negative consequences resulting from the application of the margin requirements permitted by the Regulatory Circulars.

2. Statutory Basis

CBOE represented that the proposed Regulatory Circular clarifies that CBOE's current margin rules extend to complex option spreads, thereby allowing investors to more efficiently implement these strategies. As such, CBOE believes that the proposed Regulatory Circular interpretation of CBOE Rule 12.3 is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

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

CBOE 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

CBOE neither solicited nor received written comments with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective upon filing on February 7, 2005, pursuant to Section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6)¹¹ thereunder because the proposal: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission waive the 30-day operative waiting period to permit CBOE to continue the Pilot without interruption while the Commission determines whether to approve permanent implementation of the subject margin requirements.

The Commission, consistent with the protection of investors and the public interest, has waived the 30-day requirement that the proposed rule change not become operative for 30 days after the date it was filed.¹⁴ The Commission believes that granting immediate effectiveness to the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² As required under Rule 19b-4(f)(6)(iii), the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

proposed rule change is appropriate because it will allow the Pilot to continue without interruption after it would otherwise have expired on February 7, 2005. 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 the furtherance of the purposes of the Act.¹⁵

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. Please include File Number SR-CBOE-2005-16 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-2005-16. 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

¹⁵ 15 U.S.C. 78s(b)(3)(C).

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, 450 Fifth Street, NW, Washington, DC 20549. 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-2005-16 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.¹⁶

Margaret H. McFarland
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).