

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53603; File No. SR-CBOE-2005-112)

April 5, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Permanent Approval of a Pilot Program Relating to Access to the Exchange's Hybrid Automatic Execution System

On December 30, 2005, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to make permanent the pilot program in CBOE Rule 6.13 relating to access to the Exchange's automatic execution system. The proposed rule change was published for comment in the Federal Register on March 6, 2006.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The pilot program the Exchange seeks to make permanent was initiated in July 2004, was subsequently extended twice, and is currently scheduled to expire on October 12, 2006.⁴ Under the pilot program, pursuant to CBOE Rule 6.13(b)(i)(C)(iii), orders from market makers and specialists on an options exchange ("options Market Makers") and stock exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53377 (February 27, 2006), 71 FR 11250.

⁴ See Securities Exchange Act Release Nos. 50005 (July 12, 2004), 69 FR 43032 (July 19, 2004) (approving the pilot program); 51030 (January 12, 2005), 70 FR 3404 (January 24, 2005) (extending the pilot program until October 12, 2005); and 52494 (September 22, 2005), 70 FR 56943 (September 29, 2005) (extending the pilot program until October 12, 2006).

specialists,⁵ with respect to their specialty securities, are eligible for automatic execution through the Exchange's Hybrid Trading System ("Hybrid"), subject to a 15-second limitation⁶ on orders on the same side of the market in an options class for an account or accounts of the same beneficial owner. The Exchange believes that the pilot program has been successful and has helped to contribute to the maintenance of efficient markets and to attract volume to the Exchange.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁷ and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect

⁵ By its terms, CBOE Rule 6.13(b)(i)(C)(iii) applies to orders eligible for submission pursuant to CBOE Rule 6.13 (b)(i)(C)(ii), which relates to options Market Makers and certain stock exchange specialists.

⁶ As allowed under CBOE Rule 6.13(b)(i)(C)(iii), the Exchange's floor procedure committees determined to shorten to five 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 Exchange's membership via Regulatory Circular RG05-61. The Exchange clarified that such reduction in the time period to five seconds applies to all of the market participants subject to the pilot program under CBOE Rule 6.13(b)(i)(C)(iii). Telephone conversation between Jennifer M. Lamie, Managing Senior Attorney, Exchange, and Kim M. Allen, Special Counsel, Division of Market Regulation, Commission, on March 29, 2006.

⁷ 15 U.S.C. 78f.

⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that prohibiting members from causing the entry into Hybrid of more than one order from options Market Makers or stock exchange specialists for the same beneficial account within a maximum 15-second period should help reduce the risk of exposure of CBOE market makers. The Commission notes that the 15-second restriction set forth in the rule provides a sufficient period to allow CBOE market makers to change their quotations following an execution, without placing an undue burden on market participants seeking to execute transactions on the Exchange.¹⁰ The Commission further notes that market participants subject to the 15-second restriction will still be permitted to send orders to the Exchange for execution through the Intermarket Option Linkage pursuant to the terms of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage.

¹⁰ The Commission notes that the Exchange may not take punitive action against any non-member options market maker or stock exchange specialist who submits an order to a CBOE member for entry into Hybrid in the event that the CBOE member violates CBOE Rule 6.13(b)(i)(C)(iii).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CBOE-2005-112) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris
Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).