

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49887; File No. SR-CBOE-2004-31)

June 17, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Handling of Principal Acting as Agent Orders Under Linkage

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 May 11, 2004, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The Exchange proposes to amend its rules regarding transmission of certain linkage orders. The text of the proposed rule change is available at the Office of the Secretary, the CBOE and the Commission.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to conform CBOE's linkage rules to Joint Amendment No. 10 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") regarding the manner in which a member of an options exchange may send Principal Acting as Agent Orders ("P/A Orders") that are larger than the Firm Customer Quote Size ("FCQS").³ A P/A Order is an order for the account of a market maker authorized to handle agency orders (on CBOE, Designated Primary Market Makers or "DPMs") reflecting the terms of an unexecuted customer order the DPM holds. The FCQS is the minimum size for which an exchange must provide an execution in its automatic execution system for a P/A Order, if the exchange's auto-ex system is available.

Currently, Linkage Plan Section 7(a)(ii)(B) and CBOE Rule 6.81 provide a DPM with two ways to send such orders. First, the DPM may send a P/A Order larger than the FCQS for manual processing at the receiving exchange. Second, the DPM may send an initial P/A Order for up to the FCQS. If the DPM then seeks to send another P/A Order, it must send an order for the lesser of the entire remaining size of the underlying customer order or 100 contracts.

The proposed rule change addresses the handling of orders if the DPM chooses the second alternative, the sending of multiple P/A Orders. Currently, CBOE Rule 6.81 does not recognize the possibility that an exchange's disseminated quotation may be for less than either

³ See Securities Exchange Act Release No. 49689 (May 12, 2004), 69 FR 28953 (May 19, 2004) (File No.

the remaining size of the customer order or 100 contracts. Thus, the proposed rule change specifies that a DPM sending a second P/A Order may limit such order to the lesser of: (1) the remaining size of the customer order; (2) 100 contracts; or (3) the size of the receiving exchange's disseminated quotation.

In addition, there is a practical issue if multiple exchanges are displaying the same bid or offer. In that case, the Linkage Plan is unclear as to whether a DPM must send the entire order to one exchange or whether it can send orders to multiple exchanges, as long as they are for the size of the entire order, or 100 contracts, in the aggregate. This proposed rule change seeks to amend CBOE Rule 6.81 to specify that a DPM may send P/A Orders to multiple exchanges, as long as all such orders, in the aggregate, are for the lesser of the entire remaining size or 100 contracts. However, a DPM always may limit the size of any single additional order to the size of the receiving market's disseminated quotation.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁴ in general and furthers the objectives of Section 6(b)(5)⁵ in particular in that it 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.

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

4-429) (Notice of Filing of Joint Amendment No. 10 to the Linkage Plan).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. 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-2004-31 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-2004-31. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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-2004-31 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act⁷ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that the proposed rule change should clarify

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

the DPM's obligations in handling P/A Orders, which should facilitate the efficient handling of P/A Orders through the Linkage.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. As noted above, the proposed rule change incorporates changes into the CBOE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 10, which was published for comment on May 19, 2004.⁸ The Commission received no comments on the substance of that Amendment. The Commission believes that no new issues of regulatory concern are being raised by CBOE's proposed rule change. Therefore, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.⁹

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2004-31) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

⁸ See note 3, supra.

⁹ 15 U.S.C. 78f and 78s(b).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).