

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50340; File No. SR-CBOE-2004-41)

September 9, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Minimum Size Guarantees for Linkage Orders

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 July 7, 2004, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) submitted to 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 CBOE. 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 CBOE proposes to amend its rules to conform to Amendment No. 13 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”).

The text of the proposed rule change is below. Proposed additions are in *italics*.

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Chicago Board Options Exchange, Incorporated Rules

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Section E: Intermarket Linkage

Rule 6.80 Definitions

(1)-(8) (No change.)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

- (9) "Firm Customer Quote Size" with respect to a P/A Order means the lesser of (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Customer orders entered directly for execution in that market. The Firm Customer Quote Size will be at least 10 contracts for each series of an Eligible Option Class unless the receiving Participant Exchange is disseminating a quotation of less than 10 contracts, in which case this number may equal such quotation size.
- (10) "Firm Principal Quote Size" means the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be no fewer than 10, however if the Participant Exchange is disseminating a quotation size of less than 10 contracts, this number may equal such quotation size.

(11)-(21) (No change.)

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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 had 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 purpose of this filing is to conform CBOE's linkage rules to proposed Amendment No. 13 to the Linkage Plan, which would accommodate "natural size" of quotations.³

Specifically, the Linkage Plan and CBOE rules currently require that the Exchange be firm for both Principal Acting as Agent ("P/A") and Principal Orders for at least 10 contracts (the "10-up" requirement). The proposed rule change would permit CBOE members to be firm for the actual size of their quotation, even if this amount is less than 10 contracts.

The Participants adopted the 10-up requirement for the Linkage Plan at a time when all the exchanges had rules requiring that their quotations be firm for customer orders for at least 10 contracts.⁴ The CBOE no longer applies the 10-up requirement to all its quotes.⁵ Thus, the CBOE now seeks to conform its quotation requirements for incoming Principal and P/A Orders to be more consistent with the quotation requirements for non-Linkage orders.

³ The participants in the Linkage Plan ("Participants") have filed an amendment to the Linkage Plan to change the definitions of "Firm Customer Quote Size" ("FCQS") and "Firm Principal Quote Size" ("FPQS") (Joint Amendment No. 13). See Securities Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050 (August 26, 2004) (File No. 4-429).

⁴ See Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (SR-Amex-2001-18; SR-CBOE-2001-15; SR-ISE-2001-07; SR-PCX-2001-18; and SR-Phlx-2001-37).

⁵ See CBOE Rule 8.51(c).

The proposed rule change would amend the definitions of both FCQS and FPQS. While CBOE's Linkage rules would maintain a general requirement that the FCQS and FPQS be at least 10 contracts, that minimum would not apply if CBOE were disseminating a quotation of fewer than 10 contracts. In that case, the Exchange may establish a FQCS or FPQS equal to its disseminated size.

As with Principal and P/A Orders today, if the order is of a size eligible for automatic execution ("auto-ex"),⁶ the receiving exchange must provide for the auto-ex of the order. If this is not the case (for example, the receiving exchange's auto-ex system is not engaged), the receiving exchange still must provide a manual execution for at least the FCQS or FPQS, as appropriate (in this case, the size of its disseminated quotation of less than 10 contracts).

2. Statutory Basis

The CBOE believes that the proposed rule is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5)⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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, in general, protect investors and the public interest.

⁶ At the request of the Exchange, Commission staff removed an extraneous reference provided in the original filing regarding the automatic execution size at exchanges sending and receiving Principal Orders. Telephone conversation between Angelo Evangelou, CBOE and Tim Fox, Attorney, Division of Market Regulation, Commission, on August 23, 2004.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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

The CBOE 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

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 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-2004-41 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-2004-41. 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 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-2004-41 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.⁹

Margaret H. McFarland
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).