

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51003; File No. SR-CBOE-2005-01)

January 10, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Allowing Market Participants to Submit Orders for Automatic Execution

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 December 31, 2004, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</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 CBOE proposes to allow market participants to submit orders for automatic execution. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at 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, the Exchange included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it

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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)(iii).

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

received on the proposed rule change. The text of those 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

When CBOE market participants<sup>5</sup> interact with orders in the electronic book (“the book” or “E-book”), CBOE Rule 6.45A(c) governs the allocation of such orders.<sup>6</sup> Generally, if only one market participant (“MP”) interacts with the order in the book, he/she will be entitled to receive the entire order. If, however, more than one MP attempts to interact with the same order in the book, a “quote trigger” process initiates. Under the quote trigger process, the first MP to interact with the book order starts a counting period lasting N-seconds whereby each MP that submits an order within that “N-second period” becomes part of the “N-second group” and is entitled to share in the allocation of that order via the formula contained in the rule. The Exchange proposes to provide an alternative method by which MPs may interact with orders in the book.

As proposed, MPs will have the ability to submit orders that will be eligible to execute automatically against resting orders in the book. As such, execution will be based on time priority such that the first order, whether from a MP, a customer, or broker-dealer, will have priority for up to the size of his/her order. Subsequent orders will be entitled to allocations only

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<sup>5</sup> Per CBOE Rule 6.45A, the term market participants includes an in-crowd Market-Maker, a Market-Maker complying with the in-person requirements of CBOE Rule 8.7.03(B)(1) who submits quotes from off of the floor of the Exchange through the facilities of the Exchange, an in-crowd DPM, an e-DPM, and a floor broker representing orders in the trading crowd.

<sup>6</sup> Market participants currently interact with orders in the book in one of two ways: by submitting a quote or by submitting an order. Such orders are referred to as “I-orders.”

to the extent the first order did not exhaust the size of the order in the book. CBOE Rule 6.13 governs orders submitted for automatic execution and orders submitted by MPs would be subject to these requirements. Orders submitted by MPs that are CBOE Market-Makers (“MMs”) will be treated as orders from “Options Exchange Market-Makers,” as defined in CBOE Rule 6.13(b)(i)(C)(ii)(A), and therefore will be subject to the same restrictions imposed by CBOE Rule 6.13(b)(i)(C)(iii), which generally limits all options exchange MMs (whether CBOE or away MMs) to one execution (on the same side of the market) per 15-seconds.<sup>7</sup>

Upon implementation of this new rule, CBOE MMs will have two alternative methods by which they can access orders in the book.<sup>8</sup> One will be through the use of I-orders (with allocation via the “N-second group” as described above) and the other will be through the use of an order submitted for automatic execution (with allocation based on time priority). CBOE MMs may choose which method they want to utilize to send in orders. Functionally, the vast majority of MMs will have one handheld device through which they submit either an I-order or an order for automatic execution.<sup>9</sup> Upon approval of this rule, MMs could choose to submit two

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<sup>7</sup> CBOE Rule 6.13(b)(i)(C)(iii) provides: “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 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 January 12, 2005.” The Exchange has proposed to extend the effectiveness of this Rule until October, 2005. The Exchange represents that it has the ability to surveil for violations of this rule by CBOE MPs.

<sup>8</sup> Floor brokers already have this dual ability with respect to orders they represent as agent. They may choose to submit the order for automatic execution (in accordance with CBOE Rule 6.13) or they may determine to join the “N-second group.” Away MMs, too, have the ability to submit orders for automatic execution (in accordance with CBOE Rule 6.13) or they may have a floor broker represent their orders as part of the “N-second group.”

<sup>9</sup> The routing of the order the MM submits is dictated by the way the MM marks the order. An order designated with an “I” origin code routes directly to the book and participates in

orders simultaneously.<sup>10</sup> For example, a MM may submit an order for automatic execution immediately followed by an I-order. In this respect, if the MM's auto-ex order is first, he/she will receive an execution. If, however, the MM is not first and instead was "beaten" to the order by another CBOE MM, the first MM may still participate in the order by virtue of sending in the I-order.

With respect to priority between the two types of orders, the first order received by the Exchange has priority over the other. For example, assume two MMs in the trading crowd both attempt to execute against an order in the book by sending in different types of orders. MM A sends an I-order while MM B sends an order for automatic execution. The first order received by the Exchange has priority. If it is the I-order, then the order submitted by the MM B for automatic execution will only execute to the extent there is a balance remaining after the I-order executes.<sup>11</sup> If the auto-ex order is received first, then the I-order submitted by MM A will only execute to the extent there is a balance remaining after the auto-ex order executes.<sup>12</sup> An order submitted by a MM for automatic execution will not participate in the "N-second group."

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the "N-second group." An order submitted for automatic execution by a MM will be marked with an "M" origin code and will route through ORS where it executes in accordance with Rule 6.13.

<sup>10</sup> CBOE has confirmed that the limit on sending more than one order within 15 seconds in CBOE Rule 6.13(b)(i)(C)(iii), as described in fn. 7 *supra*, only applies to auto-ex orders. Hence, a MP could send two orders simultaneously as long as one of them is sent as an I-order. Telephone conversation between Deborah L. Flynn, Assistant Director, Division of Market Regulation, Commission and Steve Youhn, Assistant Secretary, CBOE on January 5, 2005.

<sup>11</sup> When the I-order executes against the order in the book, it starts the N-second process.

<sup>12</sup> If there is a balance remaining against which the I-order executes, the N-second process starts again when the I-order executes.

## 2. Statutory Basis

The Exchange represents that allowing MMs to submit orders for automatic execution in accordance with CBOE Rule 6.13 will enhance their ability to provide liquidity and manage risk. Accordingly, CBOE believes the proposed rule change is consistent with the Act 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>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirement that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and, in general, 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 not necessary or appropriate in furtherance of the purposes of the Act. Rather, CBOE believes that the proposed rule change will have a positive effect on competition, which is appropriate and in furtherance of the purposes of the Act. Specifically, the proposal would allow CBOE MMs to have the ability to be first with respect to executing against a booked order, which entitles them to receive all of that order (up to the size of the order the MM submits). Currently, the only way a MM can take 100% of a booked order is if no other market participant submits an order during the "N-second" period. The Exchange believes that the ability to receive a larger allocation will serve as an incentive to a MM to make more vigorous markets. The Exchange believes that the proposal also puts CBOE MMs on equal footing with their away-

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78(f)(b)(5).

market counterparts, who have the ability to submit orders to CBOE for automatic execution. For these reasons, CBOE believes that the proposal will have a significantly positive effect on competition.

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

The Exchange has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup> The Exchange represents that the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for “non-controversial” proposals and make the proposed rule change effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.<sup>17</sup> The Commission notes that the proposal would only give CBOE market makers the option of sending their proprietary orders for automatic execution, an option that other CBOE market participants already enjoy. For this reason, the Commission sees

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

no reason to delay the operation of the proposed change. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

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 furtherance of the purposes of the Act.<sup>20</sup>

#### 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-2005-01 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-2005-01. 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

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> See 15 U.S.C. 78s(b)(3)(C).

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, 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 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-2005-01 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>21</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).