

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51540; File No. SR-CBOE-2005-21)

April 13, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Calculation of the National Best Bid or Offer When Another Exchange is Disconnected from the Intermarket Options Linkage

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 March 17, 2005, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) filed with 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

CBOE proposes to amend its rules regarding calculation of the National Best Bid/Offer (“NBBO”) when another participant in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”) is disconnected from the Linkage.<sup>3</sup> The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com>), the principal office of the Exchange, and at the Commission’s Public Reference Room.

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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> The term “Linkage” means the systems and data communications network that link electronically the options exchanges to one another for the purpose of sending and receiving Linkage Orders, related confirmations, order statuses and Administrative Messages. See Section 2(14) of the Linkage Plan.

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 6.13(e) provides circumstances where two Floor Officials may determine that the quotes from one or more particular markets, in one or more classes of options, are not reliable. Currently, two circumstances are listed: (1) when another participant in the Linkage Plan (“Participant”)<sup>4</sup> declares its quotes non-firm, and (2) when another Participant has communicated to the CBOE that the Participant is experiencing systems or other problems there are affecting the reliability of its disseminated quotes. The Exchange now seeks to add one more circumstance to the list: when another Participant in the Intermarket Options Linkage has “disconnected” from the Linkage and is not accepting Linkage orders. CBOE believes this addition is necessary because there are times when, because of system malfunctions, a Participant is disconnected from the Linkage but has not declared a non-firm condition and has not informed other markets that it may have quote problems. Under those situations, access to

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<sup>4</sup> See Section 2(24) of the Linkage Plan.

such market is limited, and the Exchange believes it is appropriate to exclude such market's quotes in CBOE's NBBO calculation.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of Section 6(b)(5)<sup>6</sup> 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.

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

The CBOE believes that 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.

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

Written comments were neither solicited nor received.

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 CBOE consents, the Commission will:

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

<sup>6</sup> 15 U.S.C. 78(b)(5).

- (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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-21 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-2005-21. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of 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 publicly available. All submissions should refer to File Number SR-CBOE-2005-21 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>7</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).