

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52855; File No. SR-CBOE-2005-96)

November 30, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend a Pilot Program Relating to the Retail Automatic Execution System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 15, 2005, 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 CBOE. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 extend a pilot program relating to the operation of CBOE’s Retail Automatic Execution System (“RAES”) until November 30, 2006 to allow broker-dealer orders that are eligible for execution on RAES pursuant to CBOE Rule 6.8, Interpretation and Policy .01 to automatically execute against customer limit orders on CBOE’s book in classes designated by the appropriate Floor Procedure Committee (“Pilot”). The text of the proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

available on CBOE's Web site (www.cboe.com), at CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

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 below. 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 extend the Pilot until November 30, 2006. The Pilot was originally approved on May 13, 2004, with an expiration date of November 30, 2004,⁵ and is currently extended for one year to November 30, 2005.⁶

The Exchange's RAES system was created to allow for the automatic execution of retail customer options orders against CBOE market makers at their disseminated prices. In 1999, the Exchange expanded the RAES system to allow incoming RAES orders to execute against customer limit orders on the CBOE book when such booked orders constitute CBOE's best bid/offer.⁷ The Exchange has allowed broker-dealer orders to be executed on RAES in classes

⁵ See Securities Exchange Act Release No. 49699 (May 13, 2004), 69 FR 28958 (May 19, 2004) (SR-CBOE-2003-42).

⁶ See Securities Exchange Act Release No. 50779 (December 1, 2004), 69 FR 71087 (December 8, 2004) (SR-CBOE-2004-78).

⁷ See Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (SR-CBOE-99-29).

designated by the appropriate Floor Procedure Committee.⁸ The Pilot would allow these broker-dealer orders to automatically execute against the book.

2. Statutory Basis

Because the proposed rule change will expand the number of orders eligible to trade automatically with booked customer limit orders, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general,⁹ and furthers the objectives of Section 6(b)(5) of the Act in particular,¹⁰ in that it is designed to promote just and equitable principles of trade, to remove impediments to and 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

The Exchange believes that the proposed rule change will 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

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

Because the foregoing proposed 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 prior to 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the

⁸ See Securities Exchange Act Release Nos. 45967 (May 20, 2002), 67 FR 37888 (May 30, 2002) (SR-CBOE-2002-22); 46113 (June 25, 2002), 67 FR 44486 (July 2, 2002) (SR-CBOE-2002-35); and 46598 (October 3, 2002), 67 FR 63478 (October 11, 2002) (SR-CBOE-2002-56).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

protection of investors and the public interest, and because the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii).¹³ The Exchange believes that the waiver of this period is appropriate because the filing merely extends the Pilot that has been in effect since May 13, 2004 and because the Pilot affords automatic executions to a greater number of market participants.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective.¹⁴ The Commission believes that the waiver of the 30-day operative delay will allow the Exchange to continue, without interruption, the existing operation of its Pilot for an additional year, expiring on November 30, 2006. 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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 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. See 15 U.S.C. 78c(f).

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 No. SR-CBOE-2005-96 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-96. 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 available publicly. All submissions should refer to File Number SR-CBOE-2005-96 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jonathan G. Katz
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).