

Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("UTP Plan").

The Exchange is also proposing to adopt rules based on its BEACON Remote trading program but modified for Nasdaq securities. As such, the Exchange will republish, in large part, its remote trading rules located in Chapter XXXIII, BEACON, Section 9, BEACON Remote, as a new section 31 in Chapter XXXV, Trading in Nasdaq Securities. As part of the remote trading program, the Exchange will denote separately a rule for the Exchange's Nasdaq trading program. In so doing, the substance of the remote trading rule will not change. For instance, all requirements relating to the applicability of other BSE rules, confidentiality, "Chinese Walls," communications, and Electronic Trading Permits will still apply. The only deletions or amendments will be those necessary to make the rule applicable to the Nasdaq program, such as deleting references to the BEACON trading system, which is presently designed for the trading of listed securities on the Exchange. Such changes will be administrative and non-substantive in nature.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, 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 does not believe that the proposed rule change will 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

The Exchange has neither solicited nor received written comments on 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 Exchange 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2002-05 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47052; File No. SR-CBOE-2002-61]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Rules Implementing the Options Intermarket Linkage Plan

December 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 9, 2002, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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

The Exchange proposes to adopt rules implementing the options intermarket linkage. The text of the proposed rule change is below; proposed new language is italicized.

Chicago Board Options Exchange, Incorporated Rules

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#### CHAPTER VI

\* \* \* \* \*

Doing Business on the Exchange Floor

\* \* \* \* \*

#### Section E: Intermarket Linkage

##### Rule 6.80. Definitions

*The following terms shall have the meaning specified in this Rule solely for the purpose of this Section E under Chapter VI:*

(1) "Aggrieved Party" means a member of a Participant Exchange whose bid or offer was traded-through.

(2) "Block Trade" means a trade on a Participant Exchange that:

(i) involves 500 or more contracts and has a premium value of at least \$150,000;

(ii) is effected at a price outside of the NBBO; and

(iii) involves either:

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

(A) a cross (where a member of the Participant Exchange represents all or a portion of both sides of the trade), or

(B) any other transaction (i.e., in which such member represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the Participant Exchange.

Contemporaneous transactions at the same price on a Participant Exchange shall be considered a single transaction for the purpose of this definition.

(3) "Broker/Dealer" means an individual or organization registered with the United States Securities and Exchange Commission in accordance with Section 15(b)(1) of the Exchange Act or foreign broker or dealer exempt from such registration pursuant to Rule 15a-6 under the Exchange Act.

(4) "Complex Trade" means the execution of an order in an options series in conjunction with the execution of one or more related order(s) in different options series in the same underlying security occurring at or near the same time for the equivalent number of contracts and for the purpose of executing a particular investment strategy.

(5) "Crossed Market" means a quotation in which the Exchange disseminates a bid (offer) in a series of an Eligible Option Class at a price that is greater than (less than) the price of the offer (bid) for the series then being displayed from another Participant Exchange.

(6) "Customer" means an individual or organization that is not a Broker/Dealer. Used with reference to a Linkage Order, it means an order which, if executed, would result in the purchase or sale for an account in which no Broker/Dealer has an interest.

(7) "Eligible Market-Maker," with respect to an Eligible Option Class, means a Market-Maker that:

(i) Is assigned to, and is providing two-sided quotations in, the Eligible Option Class;

(ii) is participating in the Exchange's automatic execution system, if available, in such Eligible Option Class; and

(iii) is in compliance with the requirements of Rule 6.85.

(8) "Eligible Option Class" means all option series overlying a security (as that term is defined in Section 3(a)(10) of the Exchange Act) or group of securities, including both put options and call options, which class is traded on the Exchange and at least one other Participant Exchange.

(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 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.

(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.

(11) "Linkage" means the systems and data communications network that links electronically the Participant Exchanges for the purposes specified in the Plan.

(12) "Linkage Order" means an order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(1) "Principal Acting as Agent ("P/A" Order," for the principal account of a Market-Maker (or equivalent entity on another Participant Exchange that is authorized to represent Customer orders) reflecting the terms of a related unexecuted Customer order for which the Market-Maker is acting as agent;

(ii) "Principal Order," which is an order for the principal account of an Eligible Market-Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

(13) "Locked Market" means a quotation in which the Exchange disseminates a bid (offer) in a series of an Eligible Option Class at a price that equals the price of the offer (bid) for the series then being displayed from another Participant Exchange.

(14) "NBBO" means the national best bid and offer in an options series as calculated by the Exchange.

(15) "Non-Firm" means, with respect to quotations, that members of a Participant Exchange are relieved of their obligation to be firm for their quotations pursuant to Rule 11Ac1-1 under the Exchange Act.

(16) "Participant Exchange" means a registered national security exchange that is a party to the Plan.

(17) "Plan" means the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage, as such plan may be amended from time to time.

(18) "Reference Price" means the limit price attached to a Linkage Order by the sending Participant Exchange. Except with respect to a Satisfaction Order, the Reference Price is equal to the bid disseminated by the receiving Participant Exchange at the time that the Linkage Order is transmitted in the case of a Linkage Order to sell and the offer disseminated by the receiving Participant Exchange at the time that the Linkage Order is transmitted in the case of a Linkage Order to buy. With respect to a Satisfaction Order, the Reference Price is the price that the member in the sending Participant Exchange is entitled to receive in satisfaction of a Trade-Through complaint under the Plan.

(19) "Trade-Through" means a transaction in an options series at a price that is inferior to the NBBO.

(20) "Third Participating Market Center Trade-Through" means a Trade-Through in a series of an Eligible Option Class that is effected by executing a Linkage Order, and such execution results in a sale (purchase) at a price that is inferior to the best bid (offer) being disseminated by another Participant Exchange.

(21) "Verifiable Number of Customer Contracts" mean the number of Customer contracts in the book of a Participant Exchange.

#### Rule 6.81. Operation of the Linkage

By subscribing to the Plan, the Exchange has agreed to comply with, and enforce compliance by its members with, the Plan. In this regard, the following shall apply:

(a) Pricing. Members may send P/A Orders and Principal Orders through the Linkage only if such orders are priced at the NBBO.

(b) P/A Orders.

(1) Sending of P/A Orders for Sizes No Larger than the Firm Customer Quote Size. A Market-Maker may send through the Linkage a P/A Order for execution in the automatic execution system of a Participant Exchange if the size of such P/A Order is no larger than the Firm Customer Quote Size. Except as provided in subparagraph (b)(2)(ii) below, a Market-Maker may not break up an order of a Customer that is larger than the Firm Customer Quote Size into multiple P/A Orders, one or more which is equal to or smaller than the Firm

Customer Quote Size, so that such orders could be represented as multiple P/A Orders through the Linkage.

(2) Sending of P/A Orders for Sizes Larger than the Firm Customer Quote Size. If the size of a P/A Order is larger than the Firm Customer Quote Size, a Market-Maker may send through the Linkage such P/A Order in one of two ways:

(i) The Market-Maker may send a P/A Order representing the entire Customer order. If the receiving Participant Exchange's disseminated quotation is equal to or better than the Reference Price when the P/A Order arrives at that market, that exchange will execute the P/A Order at its disseminated quotation for at least the Firm Customer Quote Size. Within 15 seconds of receipt of such order, the receiving Participant Exchange will inform the Market-Maker of the amount of the order executed and the amount, if any, that was canceled.

(ii) Alternatively, the Market-Maker may send an initial P/A Order for the Firm Customer Quote Size pursuant to subparagraph (b)(1) above. If the Participant Exchange executes the P/A Order and continues to disseminate the same quotation at the NBBO 15 seconds after reporting the execution of the initial P/A Order, the Market-Maker may send an additional P/A Order to the same Participant Exchange. If sent, such additional P/A Order must be for at least the lesser of 100 contracts or the entire remainder of the Customer order.

In any situation where a receiving Participant Exchange does not execute a P/A Order in full, such exchange is required to move its quotation to a price inferior to the Reference Price of the P/A Order.

(c) Principal Orders.

(1) Sending of an Initial Principal Order. An Eligible Market-Maker may send a Principal Order through the Linkage at a price equal to the NBBO. Subject to the next paragraph, if the Principal Order is not larger than the Firm Principal Quote Size, the receiving Participant Exchange will execute the order in its automatic execution system, if available, if its disseminated quotation is equal to or better than the price specified in the Principal Order when that order arrives at the receiving Participant Exchange. If the Principal Order is larger than the Firm Principal Quote Size, the receiving Participant will (a) execute the Principal Order at its disseminated quotation for at least the Firm Principal Quote Size and (b) within 15 seconds of receipt of such order, reply to the sending Participant Exchange, informing such Participant Exchange of the amount of the order

that was executed and the amount, if any, canceled. If the receiving Participant Exchange does not execute the Principal Order in full, it will move its quote to a price inferior to the Reference Price of the Principal Order.

(2) Receipt of Multiple Principal Orders. Once the Exchange provides an automatic execution of a Principal Order in a series of an Eligible Option Class (the "initial execution"), the Exchange may reject any Principal Order(s) in the same Eligible Option Class sent by the same Participant Exchange for 15 seconds after the initial execution unless: (1) there is a change of price in the Exchange's disseminated offer (bid) in the series of the Eligible Option Class in which there was an initial execution; and (2) such price continues to be the NBBO. After this 15 second period, and until the sooner of (a) one minute after the initial execution or (b) a change in the Exchange's disseminated bid (offer), the Exchange is not obligated to provide an automatic execution for any Principal Orders in the same Eligible Option Class received from the Participant Orders in the same Eligible Option Class received from the Participant Exchange that sent the order resulting in the initial execution, and thus may treat any such Principal Orders as being greater than the Firm Principal Quote Size.

(d) Responses to Linkage Orders.

(1) Failure to Receive a Timely Response. A Member who does not receive a response to a P Order or a P/A Order within 20 seconds of sending the order may reject any response received thereafter purporting to report an execution of all or part of that order. The Member so rejecting the response shall inform the Participant Exchange sending that response of the rejection within 15 seconds of receipt of the response.

(2) Failure to Send a Timely Response. If a Member responds to a P Order or P/A Order more than 20 seconds after receipt of that order, and the Participant Exchange to whom the Member responded cancels such response, the Member shall cancel any trade resulting from such order and shall report the cancellation to OPRA.

(e) Receipt of Orders. The Exchange will provide for the execution of P/A Orders and Principal Orders if its disseminated quotation is (i) equal to or better than the Reference Price, and (ii) equal to the then-current NBBO. If the size of a P/A Order or Principal Order is not larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, the Exchange will provide for the execution of the entire order, and shall execute such order in

its automatic execution system if that system is available. If the size of a P/A Order or Principal Order is larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, the Market-Maker must address the order within 15 seconds to provide an execution for at least the Firm Customer Quote Size or Firm Principal Quote Size, respectively. If the order is not executed in full, the Exchange will move its disseminated quotation to a price inferior to the Reference Price.

Rule 6.83. Order Protection

(a) Avoidance and Satisfaction of Trade-Throughs.

(1) General Provisions. Absent reasonable justification and during normal market conditions, members should not effect Trade-Throughs. Except as provided in paragraph (b) below, if a member effects a Trade-Through with respect to the bid or offer of a Participant Exchange in an Eligible Option Class and the Exchange receives a complaint thereof from an Aggrieved Party, either:

(i) the member who initiated the Trade-Through shall satisfy, or cause to be satisfied, through the Linkage the Aggrieved Party in accordance with subparagraph (a)(2) below; or

(ii) if the member elects not to do so (and, in the case of Third Participating Market Center Trade-Through, the member obtains the agreement of the contra party that received the Linkage Order that caused the Trade-Through), then the price of the transaction that constituted the Trade-Through shall be corrected to a price at which a Trade-Through would not have occurred. If the price of the transaction is corrected, the Member correcting the price shall report the corrected price to OPRA, notify the Aggrieved Party of the correction and cancel the Satisfaction Order.

(2) Price and Size. The price and size at which a Satisfaction Order shall be filled is as follows:

(i) Price. A Satisfaction Order shall be filled at the Reference Price. However, if the Reference Price is the price of an apparent Block Trade that caused the Trade-Through, and such trade was not, in fact, a Block Trade, then the Member may cancel the Satisfaction Order. In that case, the Member shall inform the Aggrieved Party within three minutes of receipt of the Satisfaction Order of the reason for the cancellation. Within three minutes of receipt of such cancellation, the Aggrieved Party may resend the Satisfaction Order with a Reference Price of the bid or offer that was traded through.

(ii) Size. An Aggrieved Party may send a Satisfaction Order up to the size of the

Verifiable Number of Customer Contracts that were included in the disseminated bid or offer that was traded through. Subject to subparagraph (2)(i) above and paragraph (b) below, a Member shall fill in full all Satisfaction Orders it receives following a Trade-Through, subject to the following limitations:

(A) If a number of contracts to be satisfied exceeds the size of the transaction that caused the Trade-Through, the size of the Satisfaction Order(s) that must be filled with respect to each Participant Exchange(s) shall be limited to the size of the transaction that caused the Trade-Through, and the remainder of any Satisfaction Order(s) shall be canceled;

(B) If the transaction that caused the Trade-Through was for a size larger than the Firm Customer Quote Size with respect to any of the Participant Exchange(s) traded through, the total number of contracts to be filled, with respect to all Satisfaction Orders received, shall not exceed the size of the transaction that caused the Trade-Through. In that case, the Member shall fill the Satisfaction Orders pro rata based on the Verifiable Number of Customer Contracts traded through on each Participant Exchange, and shall cancel the remainder of such Satisfaction Order(s); and

(C) Notwithstanding paragraphs (A) and (B) above, if the transaction that caused the Trade-Through occurred during the five minutes prior to the regularly-scheduled close of trading in the principal market in which the underlying security is traded, the maximum number of contracts to be satisfied with respect to any one Participant Exchange is 10 contracts.

(3) Rejection of Fills of Satisfaction Orders. Within 30 seconds of receipt of notification that another Participant Exchange has filled a Member's Satisfaction Order, the Member that sent the Satisfaction Order may reject such fill, but only to the extent that either: (i) the order(s) for the customer contracts underlying the Satisfaction Order already have been filled; or (2) the customer order(s) to buy (sell) the contracts underlying the Satisfaction Order were canceled.

(4) Protection of Customers. Whenever subparagraph (a)(1) applies, if Public Customer order (or P/A Orders representing Public Customer orders) constituted either or both sides of the transaction involved in the Trade-Through, each such Public Customer order (or P/A Order) shall receive:

(i) the price that caused the Trade-Through; or

(ii) the price at which the bid or offer traded through was satisfied, if it was satisfied pursuant to subparagraph (a)(1)(i), or the adjusted price, if there was an adjustment, pursuant to subparagraph (a)(1)(ii), whichever price is most beneficial to the Public Customer order. Resulting differences in prices shall be the responsibility of the Member who initiated the Trade-Through.

(1) The Member who initiated the Trade-Through made every reasonable effort to avoid the Trade-Through, but was unable to do so because of a systems/equipment failure or malfunction;

(2) the Member trade through the market of a Participant Exchange to which such Member had sent a P/A Order or Principal Order, and within 20 seconds of sending such order the receiving Participant Exchange had neither executed the order in full nor adjusted the quotation traded through to a price inferior to the Reference Price of the P/A Order or Principal Order;

(3) the bid or offer traded through was being disseminated from a Participant Exchange whose quotes were Non-Firm with respect to such Eligible Option Class;

(4) the Trade-Through was other than a Third Participating Market Center Trade-Through and occurred during a period when, with respect to the Eligible Option Class, the Exchange's quotes were Non-Firm; provided, however, that, unless one of the other conditions of this paragraph (b) applies, during any such period: (i) Members shall make every reasonable effort to avoid trading through the firm quotes of another Participant Exchange; and (ii) it shall not be considered an exception to paragraph (a) if a Member regularly trades through the firm quotes of another Participant Exchange during such period;

(5) the bid or offer traded through was being disseminated by a Participant Exchange during a trading rotation in the Eligible Option Class;

(6) the transaction that caused the Trade-Through occurred during a trading rotation;

(7) the transaction that caused the Trade-Through was the execution of a Complex Trade;

(8) in the case of a Trade-Through other than a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade-Through was not received by the Exchange from Aggrieved Party promptly following the Trade-Through and, in any event, (i) except in the final five minutes of trading, within three minutes from the

time the report of the transaction(s) that constituted the Trade-Through was disseminated over OPRA, and (ii) in the final five minutes of trading, within one minute from the time the report of the transaction(s) that constituted the Trade-Through was disseminated over OPRA; or

(9) in the case of a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade-Through was not received by the Exchange promptly following the Trade-Through. In applying this provision, the Aggrieved Party must send the Exchange a Satisfaction Order within three minutes from the time the report of the transaction that constituted the Trade-Through was disseminated over OPRA. To avoid liability for the Trade-Through, the Member receiving such Satisfaction Order must cancel the Satisfaction Order and inform the Aggrieved Party of the identity of the Participant Exchange that initiated the Trade-Through within three minutes of the receipt of such Satisfaction Order (within one minute in the final five minutes of trading). The Aggrieved Party then must send the Participant Exchange that initiated the Trade-Through a Satisfaction Order within three minutes of receipt of the cancellation of the initial Satisfaction Order (within one minute in the final five minutes of trading).

(c) Responsibilities and Rights Following Receipt of Satisfaction Orders.

(1) When a Member receives a Satisfaction Order, that Member shall respond as promptly as practicable pursuant to Exchange procedures by either:

(i) specifying that one of the exceptions to Trade-Through liability specified in paragraph (b) above is applicable and identifying that particular exception; or

(ii) taking the appropriate corrective action pursuant to paragraph (a) above.

(2) If the Member who initiated the Trade-Through fails to respond to a Satisfaction Order or otherwise fails to take the corrective action required under paragraph (a) within three minutes of receiving notice of a Satisfaction Order, and the Exchange determines that:

(i) there was a Trade-Through; and

(ii) none of the exceptions to Trade-Through liability specified in paragraph (b) above were applicable;

then, subject to the next paragraph, the Member who initiated the Trade-Through shall be liable to the Aggrieved Party for the amount of the actual loss resulting from non-compliance with

paragraph (a) and caused by the Trade-Through. If either (a) the Aggrieved Party does not establish the actual loss within 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, within four minutes from the time the Aggrieved Party sent the Satisfaction Order) or (b) the Aggrieved Party does not notify the Exchange Participant that initiated the Trade-Through of the amount of such loss within one minute of establishing the loss, then the liability shall be the lesser of the actual loss or the loss caused by the Trade-Through that the Aggrieved Party would have suffered had that party purchased or sold the option series subject to the Trade-Through at the "mitigation price."

The "mitigation price" is the highest reported bid (in the case where an offer was traded through) or the lowest reported offer (in the case where a bid was traded through), in the series in question 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, four minutes from the time the Aggrieved Party sent the Satisfaction Order). If the Participant Exchange receives a Satisfaction Order within the final four minutes of trading (on any day except the last day of trading prior to the expiration of the series which is the subject of the Trade-Through), then the mitigation price shall be the price established at the opening of trading in that series on the Aggrieved Party's Participant Exchange on the next trading day. However, if the price of the opening transaction is below the opening bid or above the opening offer as established during the opening rotation, then the mitigation price shall be the opening bid (in the case where an offer was traded through) or opening offer (in the case where a bid was traded through). If the Trade-Through involves a series that expires on the day following the day of the Trade-Through and the Satisfaction Order is received within the four minutes of trading, the "mitigation price" shall be the final bid (in the case where an offer was traded through) or offer (in the case where a bid was traded through) on the day of the trade that resulted in the Trade-Through.

(3) A Member that is an Aggrieved Party under the rules of another Participant Exchange governing Trade-Through liability must take steps to establish and mitigate any loss such Member might incur as a result of the Trade-Through of the Member's bid or offer. In addition, the Member shall give

prompt notice to the other Participant Exchange of any such action in accordance with subparagraph (c)(2) above.

(d) Limitations on Trade-Throughs. Members may not repeatedly trade through better prices available on other exchanges, whether or not the exchange or exchanges whose quotations are traded through are Participant Exchanges, unless one or more of the provisions of paragraph (b) above are applicable. In applying this provision:

(1) The Exchange will consider there to have been a Trade-Through if a Member executes a trade at a price inferior to the NBBO even if the Exchange does not receive a Satisfaction Order from an Aggrieved Party pursuant to subparagraph (a)(1);

(2) The Exchange will not consider there to have been a Trade-Through if a Member executed a Block Trade at a price inferior to the NBBO if such Member satisfied all Aggrieved Parties pursuant to subparagraph (a)(2) following the execution of the Block Trade; and

(3) The Exchange will not consider there to have been a Trade-Through if a Member executes a trade at a price inferior to the quotation being disseminated by an exchange that is not a Participant Exchange if the Member made a good faith effort to trade against the superior quotation of the non-Participant Exchange prior to trading through that quotation. A "good faith effort" to reach a non-Participant Exchange's quotation requires that a Member at least had sent an order that day to the non-Participant Exchange in the class of options in which there is a Trade-Through, at a time at which such non-Participant Exchange was not relieved of its obligation to be firm for its quotations pursuant to Rule 11 Ac1-1 under the Exchange Act, and such non-Participant Exchange neither executed that order nor moved its quotation to a price inferior to the price of the Member's order within 20 seconds of receipt of that order.

#### Rule 6.84. Locked and Crossed Markets

(a) Eligible Market-Maker Locking or Crossing a Market. An Eligible Market-Maker that creates a Locked Market or a Crossed Market shall unlock (uncross) that market or shall direct a Principal Order through the Linkage to trade against the bid or offer that the Eligible Market-Maker locked (crossed).

(b) Members Other than an Eligible Market-Maker Locking or Crossing a Market. A member other than an Eligible Market-Maker that creates a Locked Market or a Crossed Market shall unlock (uncross) the market.

#### Rule 6.85. Limitation on Principal Order Access

A Market-Maker shall not be permitted to send Principal Orders in an Eligible Option Class through the Linkage for a given calendar quarter if the Market-Maker effected less than 80 percent of its volume in that Eligible Option Class on the Exchange in the previous calendar quarter (that is, the Market-Maker effected 20 percent or more of its volume by sending Principal Orders through the Linkage) as calculated by the Exchange. This "80/20" is represented as follows:

$$\frac{X}{X+Y}$$

"X" equals the total contract volume the Market-Maker effects in an Eligible Option Class against orders of Customs on the Exchange during a calendar quarter (a) including contract volume effected by executing P/A Orders sent to the Exchange through the Linkage, but (b) excluding contract volume effected by sending P/A Orders through the Linkage for execution on another Participant Exchange. "Y" equals the total contract volume the Market-Maker effects in such Eligible Option Class by sending Principal Orders through the Linkage during that calendar quarter.

### 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 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

On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options linkage ("Linkage Plan").<sup>3</sup> The Linkage Plan requires Linkage Plan participants to adopt uniform rules with respect to trade-throughs, locked/crossed markets, and limitations on Principal Order

<sup>3</sup> See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

access.<sup>4</sup> In August, 2001, CBOE submitted a rule filing proposing to adopt such rules (SR-CBOE-2001-46). Because the Linkage Plan has been amended several times since that filing was submitted,<sup>5</sup> this filing replaces the filing. Accordingly, the purpose of this proposed rule change is to adopt those rules in new Section E under CBOE Chapter VI.

*Trade-Throughs.* Section 8(c) of the Linkage Plan requires the Linkage Plan participants to submit uniform rules governing trade-throughs that contain the various trade-through provisions detailed in the Linkage Plan. On June 27, 2001, the Commission approved an amendment to the Linkage Plan adding, in part, provisions to the trade-through section of the Linkage Plan, including provisions on trade-through surveillance and disciplinary action for trade-throughs of other Linkage Plan participants.<sup>6</sup> Accordingly, the Exchange represents that the proposed rules contain the trade-through provisions of the Linkage Plan. Additionally, and reluctantly, the proposed rule contain a provision allowing for disciplinary action against exchange members for trade-throughs of exchanges that are not participants in the intermarket linkage.

Proposed CBOE Rule 6.83 incorporate the various aspects of the Linkage Plan's trade-through provisions including provisions concerning avoidance and satisfaction of trade-throughs, exceptions of trade-through liability, responsibilities and rights following trade-through complaints, and limitations on trade-throughs (including the aforementioned provision prohibiting members from trading through any exchange's bid/offer, under certain circumstances).

*Locked and Crossed Markets.* Section 7(c) of the Linkage Plan requires the Linkage Plan participants to submit uniform rules providing that (1) an Eligible Market Maker that creates a

locked market or a crossed market must unlock (uncross) that market or must direct a Principal Order through the linkage to trade against the bid or offer that the Eligible Market Maker locked (crossed); and (2) a member other than an Eligible Market Maker that creates a locked market or a crossed market must unlock (uncross) the market. Proposed CBOE Rule 6.84 contains these provisions.

*Limitation on Principal Order Access.* Section 8(b)(iii) of the Linkage Plan requires the Linkage Plan participants to adopt uniform rules providing for an "80/20 Test." That test provides generally that a market shall not be permitted to send Principal Orders in an Eligible Option Class through the linkage for a given calendar quarter if the market maker effected less than 80 percent of its volume in that Eligible Option Class on the Exchange in the previous calendar quarter (that is, the market maker effect 20 percent or more of its volume by sending Principal Orders through the Linkage). Proposed CBOE Rule 6.85 contains the "80/20 Test."

*Other Rules.* CBOE also proposes to adopt CBOE Rules 6.80 and 6.81. Proposed CBOE Rule 6.80 merely provides definitions for terms used throughout proposed Section E. The Exchange represents that these definitions are consistent with the definitions contained in the Linkage Plan. Proposed CBOE Rule 6.81 describes the operation of the linkage and is meant to assist members in understanding their obligations under the Linkage Plan. The Exchange represents that it is entirely consistent with the Linkage Plan.

It should be noted that the proposed rules will become effective as the Exchange implements the operation of the applicable provisions of the linkage. This will be done pursuant to the linkage phase-in process described in the Linkage Plan.

## 2. Statutory Basis

The Exchange believes that the proposed rule change meets the requirement of Section 6(b)(5) under the Exchange Act<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market

and a national market system, and, in general, to protect investors and the public interest.

## B. Self-Regulatory Organizations's Statement on Burden on Competition

The Exchange 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 Exchange 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 Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2002-61 and should be submitted by January 17, 2003.

<sup>4</sup> A "Principal Order" is defined in the Plan as "an order for the principal account of an Eligible Market Maker" and is not a Principal Acting as Agent Order. An "Eligible Market Maker" is, for CBOE purposes, a market maker that: (1) Is assigned to, and is providing two-sided quotations in, the Eligible Option Class; (2) is logged on to participate in CBOE's auto-ex system in such Eligible Option Class; and (3) is in compliance with the requirements of the proposed CBOE Rule 6.85 which is discussed further in the proposed rule filing.

<sup>5</sup> On June 27, 2001 and May 30, 2002, respectively, the Commission approved amendments to the Linkage Plan. See Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) and 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002).

<sup>6</sup> See Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46467A]

### Self-Regulatory Organizations; Approval of Chicago Board Options Exchange, Inc. Fingerprinting Plan

December 19, 2002.

#### Correction

In Release No. 34-46467 ("Prior Release"), issued on September 6, 2002, beginning on page 58088 in the **Federal Register** issue of Friday, September 13, 2002, the amended fingerprinting plan of the Chicago Board Options Exchange, Inc. ("CBOE") was noticed incorrectly. The corrected text of the amended CBOE fingerprinting plan appears below. Additions are in italics and deletions are in brackets as compared to the plan text that appeared in the Prior Release.

#### Chicago Board Options Exchange, Incorporated Fingerprint Plan

Chicago Board Options Exchange, Incorporated ("Exchange") submits this Fingerprint Plan ("Plan") pursuant to Rule 17f2(c) under the Securities Exchange Act of 1934, as amended ("Act"). This Plan supersedes and replaces the Exchange's Fingerprint Plan approved by the Securities and Exchange Commission ("Commission") on January 27, 1984.

The purpose of this Plan is to enable Exchange members and Exchange member applicants to comply with Section 17(f)(2) of the Act and Rule 17f2 thereunder by providing a facility for the fingerprints of individual partners, directors, officers, and employees of Exchange members and Exchange member applicants to be processed and submitted to the Attorney General of the United States or its designee ("Attorney General").

The Exchange will utilize a Live-Scan electronic system for the taking of fingerprints. Any Live-Scan system utilized by the Exchange will have been certified by the Federal Bureau of Investigation ("FBI") for compliance with the FBI's Integrated Automated Fingerprint Identification System Image Quality Specifications. The Exchange

will train the Exchange personnel responsible for operating the Live-Scan system. The Exchange may also manually take fingerprints and receive manually taken fingerprint cards. The purpose of allowing this flexibility is to permit the Exchange to retain the ability to process and submit fingerprints to the Attorney General in the event the Exchange's Live-Scan system is not able to be used due to, for example, a system problem. Additionally, this flexibility will permit the Exchange to continue to receive manually taken fingerprint cards from those who are located at a distance from the Exchange or who for other reasons find it more expedient to provide manually taken fingerprint cards to the Exchange rather than travel to the Exchange to have fingerprints taken.

Accordingly, under the Plan, the Exchange may receive fingerprints through any of the following methods:

1. The Exchange may utilize a Live-Scan system to take the fingerprints and create an electronic fingerprint record for the fingerprints;
2. the Exchange may manually take the fingerprints on a paper fingerprint card; [or]
3. the Exchange may receive manually taken paper fingerprint cards;
4. *the Exchange may receive paper copies of electronic fingerprint records created by an FBI certified Live-Scan system that is utilized by a third party;* or
5. *the Exchange may electronically receive from a remote location electronic fingerprint records created by an FBI certified Live-Scan system that is utilized by a third party.*

If the Exchange electronically receives an electronic fingerprint record created by an FBI certified Live-Scan system that is utilized by a third party, the Exchange will take reasonable measures to receive the transmission in an electronically secure manner.

The fingerprint cards and electronic fingerprint records will identify the individual providing the fingerprints and the Exchange member or Exchange member applicant with whom the individual is associated. The fingerprint cards and electronic fingerprint records will be in a form acceptable to the Attorney General and the Exchange.

In the event that an individual who previously provided fingerprints to the Exchange in accordance with this Plan is required to re-submit fingerprints, the Exchange may permit the individual not to be re-fingerprinted if the following conditions are satisfied:

1. The Exchange is in possession of an electronic record of that individual's

fingerprints taken by a Live-Scan system;

2. the existing electronic fingerprint record was previously submitted to, and deemed acceptable by, the Attorney General; and

3. the Exchange is able to resubmit the existing electronic fingerprint record to the Attorney General.

In such an event, the Exchange shall re-submit the existing electronic fingerprint record to the Attorney General and process the fingerprint record received back from the Attorney General with respect to the fingerprints in the same manner as is the case with respect to initially submitted fingerprints.

Once fingerprints are taken, the Exchange will review the information on the fingerprint card or in the electronic fingerprint record for the fingerprints, as applicable, for completeness, but not for accuracy, and will then submit the completed fingerprint card or electronic fingerprint record, as applicable, to the Attorney General for identification and processing.

The Exchange shall submit fingerprint cards and electronic fingerprint records to the Attorney General in accordance with any requirements of the Attorney General relating to the manner of submission of this information. The submission may occur through any of the following methods:

1. The Exchange may electronically transmit to the Attorney General an electronic fingerprint record created by a Live-Scan system;
2. the Exchange may print out an electronic fingerprint record created by a Live-Scan system onto a paper fingerprint card (or receive a paper copy of an electronic fingerprint record created by an FBI certified Live-Scan system that is utilized by a third party) and submit the paper fingerprint card to the Attorney General through manual transmission, such as by United States mail; or
3. the Exchange may submit manually taken fingerprint cards to the Attorney General through manual transmission, such as by United States mail.

The purpose of allowing this flexibility is to permit the Exchange to retain the ability to submit fingerprints to the Attorney General in the event the Exchange is unable to electronically transmit electronic fingerprint records to the Attorney General due to a telecommunication problem or otherwise. Additionally, this flexibility will permit the Exchange to manually transmit to the Attorney General fingerprint cards manually taken by the Exchange and received from Exchange

<sup>8</sup> 17 CFR 200.30-3(a)(12).