

BSE-2004-15) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49887; File No. SR-CBOE-2004-31]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Handling of Principal Acting as Agent Orders Under Linkage

June 17, 2004.

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 May 11, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II 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 and to grant accelerated approval to the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding transmission of certain linkage orders. The text of the proposed rule change is available at the Office of the Secretary, the CBOE and 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, 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

The purpose of the proposed rule change is to conform CBOE's linkage rules to Joint Amendment No. 10 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") regarding the manner in which a member of an options exchange may send Principal Acting as Agent Orders ("P/A Orders") that are larger than the Firm Customer Quote Size ("FCQS").<sup>3</sup> A P/A Order is an order for the account of a market maker authorized to handle agency orders (on CBOE, Designated Primary Market Makers or "DPMs") reflecting the terms of an unexecuted customer order the DPM holds. The FCQS is the minimum size for which an exchange must provide an execution in its automatic execution system for a P/A Order, if the exchange's auto-ex system is available.

Currently, Linkage Plan Section 7(a)(ii)(B) and CBOE Rule 6.81 provide a DPM with two ways to send such orders. First, the DPM may send a P/A Order larger than the FCQS for manual processing at the receiving exchange. Second, the DPM may send an initial P/A Order for up to the FCQS. If the DPM then seeks to send another P/A Order, it must send an order for the lesser of the entire remaining size of the underlying customer order or 100 contracts.

The proposed rule change addresses the handling of orders if the DPM chooses the second alternative, the sending of multiple P/A Orders. Currently, CBOE Rule 6.81 does not recognize the possibility that an exchange's disseminated quotation may be for less than either the remaining size of the customer order or 100 contracts. Thus, the proposed rule change specifies that a DPM sending a second P/A Order may limit such order to the lesser of: (1) The remaining size of the customer order; (2) 100 contracts; or (3) the size of the receiving exchange's disseminated quotation.

In addition, there is a practical issue if multiple exchanges are displaying the same bid or offer. In that case, the Linkage Plan is unclear as to whether a

DPM must send the entire order to one exchange or whether it can send orders to multiple exchanges, as long as they are for the size of the entire order, or 100 contracts, in the aggregate. This proposed rule change seeks to amend CBOE Rule 6.81 to specify that a DPM may send P/A Orders to multiple exchanges, as long as all such orders, in the aggregate, are for the lesser of the entire remaining size or 100 contracts. However, a DPM always may limit the size of any single additional order to the size of the receiving market's disseminated quotation.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(5)<sup>5</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.

#### A. Self-Regulatory Organization's Statement on Burden on Competition

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.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

#### III. 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-2004-31 on the subject line.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 49689 (May 12, 2004), 69 FR 28953 (May 19, 2004) (File No. 4-429) (Notice of Filing of Joint Amendment No. 10 to the Linkage Plan).

<sup>4</sup> 15 U.S.C. 78f(b).

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

### 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-2004-31. 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 offices 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-2004-31 and should be submitted on or before July 16, 2004.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>7</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public

interest. The Commission believes that the proposed rule change should clarify the DPM's obligations in handling P/A Orders, which should facilitate the efficient handling of P/A Orders through the Linkage.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the CBOE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 10, which was published for comment on May 19, 2004.<sup>8</sup> The Commission received no comments on the substance of that Amendment. The Commission believes that no new issues of regulatory concern are being raised by CBOE's proposed rule change. Therefore, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.<sup>9</sup>

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2004-31) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49898; File No. SR-NASD-2004-091]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Discontinue the Use of the Nasdaq NEWS Feature of the Nasdaq Workstation II, and To Provide a Different Standard for the Beginning and End of a Trading Halt

June 21, 2004.

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 June 15, 2004, the National Association of

Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. 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

Nasdaq proposes to discontinue the Nasdaq NEWS feature of the Nasdaq Workstation II ("NWII"). Should the Commission approve the proposed rule change, Nasdaq intends to implement the proposed rule change during August 2004, and will inform market participants of the exact implementation date via a Head Trader Alert on <http://www.nasdaqtrader.com>.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>3</sup>

#### 4120. Trading Halts

(a) No change.  
(b) Procedure for Initiating a Trading Halt

(1)-(3) No change.

(4) Should Nasdaq determine that a basis exists under Rule 4120(a) for initiating a trading halt, the commencement of the trading halt will be effective [simultaneously with appropriate notice in the Nasdaq "NEWS" frame] *at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq website. In addition, Nasdaq shall disseminate notice of the commencement of a trading halt through major wire services.*

(5) Trading in a halted security shall resume *at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq website* [upon notice via the Nasdaq "NEWS" frame that a trading halt is no longer in effect]. *In addition, Nasdaq shall disseminate notice of the resumption of trading through major wire services.*

(6)-(7) 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, Nasdaq included statements concerning

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>8</sup> See note 3, *supra*.

<sup>9</sup> 15 U.S.C. 78f and 78s(b).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at [www.nasd.com](http://www.nasd.com).