

office of BSE. 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-BSE-2004-59 and should be submitted on or before January 24, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50907; File No. SR-CBOE-2004-04]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto To Amend the Exchange's Guaranteed Participation Rule Relating to Facilitation and Crossing Transactions

December 22, 2004.

On January 16, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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> a proposed rule change to amend CBOE Rule 6.74, Crossing Orders, relating to facilitation and crossing transactions. On November 3, 2004, CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on November 18, 2004.<sup>4</sup> The Commission received no comments on the proposal.

CBOE proposes to amend Exchange Rule 6.74 with respect to the guaranteed participation to which a floor broker is entitled when seeking to execute crossing and facilitation transactions. Under the current rule, after requesting

a market from the trading crowd, a floor broker seeking to cross an order he or she is holding with another order, or, in the case of a public customer order, with a facilitation order from the firm from which the public customer order originated, is entitled to a guaranteed participation of 20% when the order trades at a price that matches the price given by the trading crowd in response to the initial request for a market, and 40% when the order trades at a price that improves upon that price. The proposed rule change would entitle the floor broker to a 40% guarantee in both cases.<sup>5</sup>

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> and, in particular, the requirements of section 6(b)(5) of the Act.<sup>7</sup> The Commission has found with respect to participation guarantees in other contexts that a maximum guarantee of 40% is not inconsistent with statutory standards of competition and free and open markets.<sup>8</sup>

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act<sup>9</sup>, that the proposed rule change (File No. SR-CBOE-2004-04), as amended, be, and hereby is, approved.

<sup>5</sup> These guaranteed percentages apply after all public customer orders that were on the limit order book and represented in the trading crowd at the time the market was established have been satisfied. The proposal would also amend CBOE Rule 6.74(d)(v) to make corresponding changes to the DPM participation entitlement as it pertains to facilitation and crossing orders. Specifically, the rule would be amended to state that DPMs are not entitled to any guaranteed participation for trades occurring pursuant to CBOE Rule 6.74(d) unless the floor broker crosses less than its guaranteed 40%, in which case the DPMs guarantee would be a percentage that, when combined with the firm's percentage, does not exceed 40% of the order. The intent of the provision is that the aggregate of the guarantees may not exceed 40% of the remainder of the order after public customer orders have been satisfied. Telephone conversation between Stephen Youhn, Legal Division, CBOE, and Ira Brandriss, Assistant Director, Division, Commission, on December 17, 2004.

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact of 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, e.g., Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96-99 and accompanying text.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34-50924; File No. SR-CBOE-2004-67]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating To Split Price Priority

December 23, 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 October 20, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "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. On December 17, 2004, CBOE amended the proposed rule change ("Amendment No. 1").<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

CBOE proposes to amend its split price trading rule. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*; deletions are in [brackets].

\* \* \* \* \*

#### Rule 6.47. Priority on Split Price Transactions Occurring in Open Outcry

(a) Purchase *or sale* priority. If a member purchases (*sells*) one or more option contracts of a particular series at a particular price or prices, he shall, at the next lower (*higher*) price at which a

<sup>10</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> In Amendment No. 1, CBOE amended the proposed rule change to: (i) Remove the parenthetical "(or a reasonably larger number)" from current CBOE Rule 6.47(a) and from the proposed rule text of CBOE Rule 6.47(b); and (ii) revise proposed Interpretations and Policies .01 to clarify that if a floor broker is required to yield, he must yield to "orders for the accounts of non-members."

<sup>12</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 Letter from Stephen Youhn, Legal Division, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 2, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 50655 (November 10, 2004), 69 FR 67614.