

rapid fire orders has been addressed through systemic enhancements which, according to ILA rules, automatically cancel an ILA order if it can not be immediately executed. Accordingly, since the concerns behind the thirty-second restriction never materialized, and because systemic enhancements have obviated the need for such a restriction, the Exchange is seeking to abolish the limitation. Moreover, the Exchange believes that removing the thirty-second restriction will encourage more customers to utilize ILA, and thereby have their orders immediately executed, without the intervention of a specialist.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>4</sup> in general, and Section 6(b)(5)<sup>5</sup> in particular, 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 is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

### 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 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 comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)

of the Act<sup>6</sup> and Rule 19b-4(f)(6)<sup>7</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>8</sup> normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>9</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange seeks to have the proposed rule change become operative immediately so that it can eliminate a restriction in its rules that is no longer necessary.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective as of the date of this order.<sup>10</sup> The Commission believes that the proposal could enhance the use of automatic executions on the Exchange and may result in more timely and orderly executions of orders.

At any time within 60 days of the filing of such 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.

## 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 E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2004-46 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-BSE-2004-46. This file number should be included on the

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> *Id.*

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> For purposes of only accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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 the 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-2004-46 and should be submitted on or before February 14, 2005.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E5-212 Filed 1-21-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51030; File No. SR-CBOE-2004-91]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated To Extend a Pilot Program and Eliminate the Rule Prohibiting Electronically Generated and Communicated Orders

January 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 29, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities

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

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

and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposal, as amended, as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</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

The Exchange proposes to extend the pilot program in CBOE Rule 6.13 relating to market maker access to the Exchange's automatic execution system and to eliminate CBOE Rule 6.8A prohibiting the electronic generation and communication of orders.

Below is the text of the proposed rule change. Proposed additions are *italicized*; proposed deletions are [bracketed].

#### Rules of the Chicago Board Options Exchange

\* \* \* \* \*

Rule 6.8A. [Electronically Generated and Communicated Orders] *Reserved*

(a) Members may not enter, nor permit the entry of, orders into the Exchange's Order Routing System if those orders are created and communicated electronically without manual input (*i.e.*, order entry must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent), and if such orders are eligible for execution on RAES at the time they are sent. Nothing in this paragraph, however, prohibits members from electronically communicating to the Exchange orders manually entered by customers into front-end communication systems (*e.g.*, Internet gateways, online networks, etc.). An order is eligible for execution on RAES if:

(1) Its size is equal to or less than the maximum RAES order size for the particular series;

(2) For public customer orders, the order is marketable or is tradable

<sup>3</sup> See Form 19b-4 dated January 7, 2005 ("Amendment No. 1"). Amendment No. 1 made minor revisions to Item 7 of the proposed rule change as originally filed.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

pursuant to the RAES auto step-up feature at the time it is sent; or for broker-dealer orders, the order is otherwise submitted in accordance with Interpretation .01 of Rule 6.8; and

(3) If the order has either no contingency or has a contingency that is accepted for execution by the RAES system.

A marketable order is a market order or a limit order where the specified price to sell is below or at the current bid, or if to buy is above or at the current offer. An order is tradable pursuant to the RAES auto step-up feature if the appropriate Floor Procedure Committee has designated the class as an automatic step-up class and if the National Best Bid or Offer for the particular series is reflected by the current best bid or offer in another market by no more than the step-up amount as defined in Interpretation .02 of Rule 6.8.

(b) The Exchange's Order Routing System ("ORS") is the Exchange's electronic order routing and delivery system which routes orders to the Exchange's automatic and electronic execution systems and to other Exchange systems, such as handheld terminals and trade match systems. The ORS also delivers electronic fill reports and order status reports.]

#### Rule 6.13. CBOE Hybrid System's Automatic Execution Feature

(a) No change.

(b) Automatic Execution.

(i) \* \* \*

(A)-(B) No change.

(C) Access:

(i)-(ii) No Change.

(iii) 15-Second Limitation: With respect to orders eligible for submission pursuant to paragraph (b)(i)(C)(ii), members shall neither enter nor permit the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The appropriate FPC may shorten the duration of this 15-second period by providing notice to the membership via a Regulatory Circular that is issued at least one day prior to implementation. The effectiveness of this rule shall terminate on [January 12, 2005] *October 12, 2005*.

\* \* \* \* \*

(ii)-(iv) No change.

(c) \* \* \*

(i) No change.

(ii) \* \* \*

(A) No change.

(B) [Electronic generation and communication of orders in violation of Rule 6.8A by non-trading crowd participants.]

[(C)] Effecting transactions that constitute manipulation as provided in Rule 4.7 and Exchange Act Rule 10b-5. (d)-(e) No change.

\* \* \* \* \*

### 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 Exchange 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 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

The Commission in 2004 approved on a pilot basis CBOE Rule 6.13(b)(i)(C)(iii) relating to the frequency with which certain market participants could submit orders for execution through the Exchange's Hybrid Trading System.<sup>6</sup> Rule 6.13(b)(i)(C)(iii) provides in relevant part:

(iii) 15-Second Limitation: With respect to orders eligible for submission pursuant to paragraph (b)(i)(C)(ii), members shall neither enter nor permit the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The appropriate FPC may shorten the duration of this 15-second period by providing notice to the membership via a Regulatory Circular that is issued at least one day prior to implementation. The effectiveness of this rule shall terminate on January 12, 2005. \* \* \*

Upon approval of CBOE Rule 6.13(b)(i)(C)(iii), the Exchange began allowing orders from options market makers to be eligible for automatic execution, subject to the 15-second limitation described above. As the pilot period is scheduled to expire on January 12, 2005, the Exchange proposes to extend the pilot program for a nine-month period. The Exchange believes that the pilot program has been successful in attracting market maker volume to the Exchange. In this regard, the Exchange represents that during November 2004, the number of average

<sup>6</sup> See Securities Exchange Act Release No. 50005 (July 12, 2004), 69 FR 43032 (July 19, 2004) (SR-CBOE-2004-33).

daily transactions involving options market maker orders submitted through the Exchange's Order Routing System ("ORS") increased more than 300% compared to pre-pilot period transactions, and the average daily volume involving options market maker orders submitted through the Exchange's ORS almost doubled when compared to pre-pilot period volume. The Exchange notes that given the early success of the pilot program, the Exchange proposes to extend the pilot program's duration nine months, until October 12, 2005.

The Exchange also proposes to delete CBOE Rule 6.8A, Electronically Generated and Communicated Orders, and all other existing references to CBOE Rule 6.8A. When the Exchange adopted CBOE Rule 6.13(b)(i)(C)(iii), CBOE market makers and Designated Primary Market Makers (DPMs) did not have the protections available to them that they have today to prevent the rapid influx of orders. For this reason, CBOE Rule 6.8A when adopted was necessary to prevent excessive exposure. Today, market makers have the ability to manage their exposure more quickly and efficiently, thereby obviating the need for the CBOE Rule 6.8A.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the extension of the pilot program will allow the Exchange to continue to provide auto-ex access to all options market makers, and that elimination of the electronic generation of orders prohibition will enhance access to the Exchange. Accordingly, the Exchange believes the proposed rule change is consistent with the Act<sup>8</sup> and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

<sup>7</sup> In this regard, the Exchange notes that the Philadelphia Stock Exchange eliminated its electronic generation rule in 2003. See Securities Exchange Act Release No. 48648 (October 16, 2003), 68 FR 60762 (October 23, 2003) (SR-Phlx-2003-37).

<sup>8</sup> 15 U.S.C. 78a *et seq.*

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

### 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 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 neither solicited nor received comments on the proposal.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> At any time within 60 days of the filing of such 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.<sup>13</sup>

The Exchange has requested that the Commission waive the 30-day operative delay under Rule 19b-4(f)(6)(iii).<sup>14</sup> The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the 30-day operative period delay would allow the pilot program to continue uninterrupted and would remove immediately the restriction on the entry into the Exchange's ORS of

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on January 7, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

electronically generated and communicated orders.<sup>15</sup> For this reason, the Commission designates this proposal to be operative upon filing with the Commission.

### 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-2004-91 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-2004-91. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2004-91 and should

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

be submitted on or before February 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51027; File No. SR-CBOE-2005-07]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Fees for Transactions in Options on the Standard & Poor's Depository Receipts®

January 12, 2005.

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 January 11, 2005, the Chicago Board Options Exchange, Inc. ("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 Exchange. 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 is proposing to amend its Fee Schedule to establish fees for transactions in options on the Standard & Poor's Depository Receipts® ("SPDRs®"). The text of the proposed rule change is available on CBOE's Web site (<http://www.cboe.org/legal/>), 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, the Exchange 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 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

The Exchange proposes to amend its Fee Schedule to establish fees for transactions in options on SPDRs.

The transaction fee for customer orders in options on SPDRs will be \$.15 per contract.<sup>3</sup> All other transaction fees for options on SPDRs will be equal to the transaction fees currently applied to options on the Nasdaq-100 Index Tracking Stock ("QQQ"). Specifically, market-maker and DPM transaction fees will be \$.24 per contract, member firm proprietary transaction fees will be \$.20 for facilitation of customer orders and \$.24 for non-facilitation orders, broker-dealer transaction fees will be \$.25 per contract, non-member market-maker transaction fees will be \$.26 per contract, and linkage fees will be \$.24 per contract.

As per the current CBOE Fee Schedule, the floor brokerage fee for options on SPDRs will be \$.04 per contract and \$.02 per contract for crossed orders. The RAES Access Fee will not apply as options on SPDRs will trade on the Exchange's Hybrid Trading System. The \$.22 marketing fee will apply to market-maker, DPM and e-DPM transactions in options on SPDRs.<sup>4</sup>

The proposed rule change is intended to establish fees for CBOE's options on SPDRs that are competitive with the fees charged by other exchanges for transactions in options on SPDRs.

##### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(4) of the Act,<sup>5</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

#### 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

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 rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder. 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.

### 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 No. SR-CBOE-2005-07 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-2005-07. 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

<sup>16</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> Under the current CBOE Fee Schedule, the customer transaction fee for all options on exchange-traded funds (other than QQQ and DIA options) is \$.15 per contract.

<sup>4</sup> See File No. SR-CBOE-2005-05.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 19b-4(f)(2).