

operator of one of its facilities.<sup>9</sup> In fact, the Act does not require that an SRO have any ownership interest in the operator of one of its facilities. Nevertheless, the BSE intends to maintain an ongoing ownership interest in BOX LLC, the operator of its BOX facility. However, regardless of this intention, the BSE is the SRO for the BOX facility, and the BSE will, independent of its ownership interest, ensure that BOX LLC will conduct the facility's business in a manner consistent with the regulatory and oversight responsibilities of the BSE and with the Act.

Moreover, nothing in the Exchange's proposal will alter or modify in any way the terms or the enforcement of the LLC Agreement. In addition, the actual transfer of any BSE units will not alter or modify the terms or the enforcement of the LLC Agreement. The BSE also represents that, should there be any changes in the terms of the LLC Agreement between the date of the publication of this proposal and the transfer of BSE's Units which would result in the BSE's Percentage Interest falling below the 20% threshold, then the Exchange will resubmit this filing in order for the Commission to consider the transfer of Units in light of any changes made to the LLC Agreement.

## 2. Statutory Basis

The Exchange believes that this filing is consistent with section 6(b)<sup>10</sup> of the Act, in general, and furthers the objectives of section 6(b)(1),<sup>11</sup> in particular, in that it ensures that the Exchange is so organized and has the capacity to carry out the purposes of the Act and to comply and to enforce compliance by the Exchange's members with the Act, the rules and regulations of the Act, and the rules of the Exchange; and section 6(b)(5),<sup>12</sup> in particular, in that it is designed to facilitate transactions in securities; 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, processing information with respect to, and facilitating 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

No written comments were either solicited or received.

## 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 self-regulatory organization 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, as amended, 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-BSE-2005-21 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-BSE-2005-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of 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-2005-21 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-4194 Filed 8-4-05; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52173; File No. SR-CBOE-2005-51]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

July 29, 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 June 30, 2005, the Chicago Board Options Exchange, Incorporated ("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 substantially prepared by the CBOE. On July 26, 2005, the CBOE filed Amendment No. 1 to the proposed rule

<sup>9</sup> See Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225, 55229-30 (November 1, 2001) (approving SR-PCX-00-25). ArcaEx is operated by Archipelago Exchange LLC ("Arca LLC"). At the time of its approval, PCX's ownership interest in Arca LLC consisted solely of a 10% interest in Archipelago Holdings LLC, the parent company of Arca LLC. See 66 FR at 55225.

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

<sup>11</sup> 15 U.S.C. 78f(b)(1).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</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.

change.<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

The CBOE proposes to amend its rules to conform to recent proposed Intermarket Linkage Plan ("Plan") changes relating to "trade and ship" and "book and ship" concepts. The text of the proposed rule change is available on the CBOE's Web site (<http://www.cboe.com>), at CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

The CBOE is proposing to amend its rules to conform to recent proposed changes governing the operation of the Intermarket Linkage, as set forth in Plan Amendment No. 15. Specifically, the CBOE is proposing that: (i) An exchange may trade an order at a price that is one-tick inferior to the NBBO if a linkage order<sup>4</sup> is transmitted to the NBBO market(s) to satisfy all interest at the NBBO price ("trade and ship" concept); and (ii) an exchange may book an order that would lock another exchange if a linkage order is sent to such other exchange to satisfy all interest at the lock price ("book and ship" concept). Under the trade and ship proposal, any execution received from the NBBO market must (pursuant to agency obligations) be reassigned to the customer order that is underlying the

linkage order that was transmitted to "take out" the NBBO market. Examples of the trade and ship and book and ship concepts are below:

*Trade and Ship Example.* The CBOE is disseminating an offer of \$2.00 for 100 contracts. Another participating exchange ("Exchange B") is disseminating the national best offer of \$1.95 for 10 contracts. No other market is at \$1.95. CBOE receives a 100-contract customer buy order to pay \$2.00. Under this proposal, CBOE could execute 90 contracts (or 100 contracts) of the customer order at \$2.00 provided CBOE simultaneously transmits a 10-contract Principal Acting as Agent Order ("P/A Order") to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill at \$1.95 and 90 contracts at \$2.00 (if the customer order was originally filled in its entirety at \$2.00, an adjustment would be required to provide the customer with the \$1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.

*Book and Ship Example.* CBOE is disseminating a \$1.85-\$2.00 market. Exchange B is disseminating a \$1.80-\$1.95 market. The \$1.95 offer is for 10 contracts. No other market is at \$1.95. CBOE receives a customer order buy 100 contracts at \$1.95. Under this proposal, CBOE could book 90 contracts of the customer buy order at \$1.95 provided CBOE simultaneously transmitted a 10-contract P/A Order to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill and the rest of the customer's order will be displayed as a \$1.95 bid on CBOE. The national best offer would likely be \$2.00. As proposed, this would not be deemed a "locked" market for purposes of the Plan.

##### 2. Statutory Basis

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

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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, as amended, 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-2005-51 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-CBOE-2005-51. 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

<sup>3</sup> See Form 19b-4 dated July 26, 2005 ("Amendment No. 1"). In Amendment No. 1, CBOE revised the rule text to use terms consistent with CBOE's current rules and made certain clarifying changes to the purpose section.

<sup>4</sup> A linkage order is a certain type of immediate or cancel order that is routed through the Linkage facility and is defined in Section 2(16) of the Plan.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-51 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-4228 Filed 8-4-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52168; File No. SR-ISE-2005-32]

### Self-Regulatory Organizations; International Securities Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 2 Thereto To Extend the Linkage Fee Pilot Program

July 29, 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 July 7, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on July 26, 2005, and withdrew Amendment No. 1 on July 28, 2005. The Exchange filed Amendment No. 2 to proposed rule

change on July 28, 2005.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis for a pilot period through July 31, 2006.

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

The Exchange proposes to extend until July 31, 2006, the current pilot program regarding transaction fees charged for trades executed through the intermarket option linkage ("Linkage"). Currently pending before the Commission is a filing to make such fees permanent.<sup>4</sup> The text of the proposed fee schedule is available on the Exchange's Web site (<http://www.iseoptions.com>), at the Exchange's principal office, 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 III 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 purpose of the proposed rule change is to extend for one year the pilot program establishing Exchange fees for Principal Orders and Principal Acting as Agent ("P/A") Orders sent through Linkage and executed on the Exchange. The fees currently are effective for a pilot program scheduled to expire on July 31, 2005,<sup>5</sup> and the proposed rule change would extend the fees through July 31, 2006. The three fees the Exchange charges for these orders are: The Market Maker and Firm Proprietary execution fees for trading on

the Exchange, which range from \$.12 to \$.21 depending on average daily trading volume on the Exchange; a surcharge of between \$.05 and \$.15 for trading certain licensed products; and a \$.03 comparison fee (collectively "linkage fees").<sup>6</sup> These are the same fees that all Exchange Members pay for non-customer transactions executed on the Exchange.<sup>7</sup> The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

In the Permanent Fee Filing, the Exchange discusses in detail the reasoning why it believes it is appropriate to charge fees for Principal and P/A Orders sent through Linkage and executed on the Exchange. Basically, market makers on competing exchanges always can match a better price on the Exchange; they never are obligated to send orders to the Exchange through Linkage. However, if such market makers do seek the Exchange's liquidity, whether through conventional orders or through the use of Principal Orders or P/A Orders, the Exchange believes it is appropriate to charge its Members the same fees levied on other non-customer orders. The Exchange appreciates that there has been limited experience with Linkage and that the Commission is continuing to study Linkage, in general, and the effect of fees on Linkage trading. Thus, this filing would extend the status quo with Linkage fees for one year while the Commission considers the Permanent Fee Filing.

###### 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(4)<sup>8</sup> that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. As discussed in more detail above, the Exchange believes that this proposed rule change will equitably allocate fees by having all non-customer users of Exchange transaction services pay the same fees. If the Exchange were not to charge Linkage fees, the Exchange's fee would not be equitable in that Exchange Members would be subsidizing the trading of their

<sup>3</sup> Amendment No. 2 makes technical corrections to the proposed rule text and clarifies the purpose of the proposed rule change.

<sup>4</sup> See SR-ISE-2003-30 ("Permanent Fee Filing").

<sup>5</sup> See Securities Exchange Act Release No. 50010 (July 13, 2004); 69 FR 43649 (July 21, 2004) (Order extending the Linkage fee pilot program to July 31, 2005).

<sup>6</sup> Pursuant to other pilot programs, certain linkage fees may not apply during the Linkage pilot program.

<sup>7</sup> The Exchange charges these fees only to its Members, generally firms who clear Principal and P/A Orders for market makers on the other linked exchanges.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>7</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.