

*Rule 30.20.05:* The Exchange proposes to delete this Interpretation, which is specific to an expired product (S&P 500 Index Bear market Warrants), and replace it with language from Exchange Act Rule 242.203(b)(3) relating to threshold securities.

*Rule 30.20.06:* The Exchange proposes to adopt this new Interpretation to remind members that even if a security is expected from any short sale price test under any Pilot program (or any order issued pursuant to Exchange Act Rule 242.202T), members or member organizations must still comply with the marking and locate requirements in Exchange Act Rule 242.200 and 203.

The Exchange believes the proposed rule change is consistent with the Act 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 Exchange Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</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.

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

CBOE 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 Exchange 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**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Exchange Act<sup>7</sup> and subparagraph (f)(6) of Exchange Act Rule 19b-4.<sup>8</sup> CBOE has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not significantly burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. CBOE requests that the Commission waive the

30-day pre-operative delay requirement contained in Rule 19b-4(f)(6)(iii). CBOE believes that good cause exists to grant such waiver because of the importance of short sale regulation to the protection of investors and compliance with Reg SHO.<sup>9</sup>

The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and the public interest. The Commission believes that accelerating the operative date does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change effective and operative immediately.

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 Exchange 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 Exchange 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-2004-81 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-2004-81. 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/>

<sup>9</sup> The compliance date for Reg SHO is January 3, 2005. See Adopting Release, *supra* note 2. The operative date of the proposed filing is January 3, 2005. See CBOE Regulatory Circular RG04-127, December 21, 2004, available at <http://www.cboe.org/Legal/>.

[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 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-2004-81 and should be submitted on or before January 19, 2005.

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**

[Release No. 34-50915; File No. SR-CBOE-2004-52]

### **Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated to Amend its "Trigger" Rule to Permit RAES Orders to Automatically Execute Against Orders Resting on the Exchange's Limit Order Book**

December 22, 2004.

On July 30, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), 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 relating to the Exchange's AutoQuote Triggered Ebook Execution system ("Trigger"). On September 23, 2004, the Exchange amended the proposed rule

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on November 22, 2004.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

Trigger allows orders resting in CBOE's electronic book to automatically execute in the limited situation where the bid or offer for a series of options generated by the Exchange's AutoQuote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's Autoquote system) crosses or locks the Exchange's best bid or offer for that series as established by a booked order. Currently, Trigger provides for automatic executions of orders resting in the book<sup>5</sup> up to the maximum number of contracts permitted to be entered into RAES for that series ("Trigger Volume"). The trading crowd has the ability, but not the obligation, to execute manually the remaining contracts in the book that exceed the Trigger Volume. Any unexecuted contracts in the booked order in excess of the Trigger Volume remain in the book, and the bid or offer generated by Autoquote is one tick inferior to the price of the booked order, so that the disseminated quote does not cross or lock the Autoquote bid or offer.

The Exchange proposes to amend CBOE Rule 6.8(d)(v) to provide that where contracts remain in the book after an execution (or partial execution), or for any series where Trigger has not yet been implemented, orders in RAES for options of that series may, as determined by the appropriate FPC on a class by class basis, be (1) Automatically executed; or (2) rerouted on the Exchange's Order Routing System to the crowd PAR terminal (or to another location in the event of system problems or contrary firm routing instructions).

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) of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>8</sup> because, in the Commission's view, the proposed rule change should help facilitate the execution of incoming RAES orders submitted during the Trigger process by making such orders eligible for automatic execution against the book orders that are crossed or locked by the Exchange's Autoquote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's Autoquote system). The Commission notes that the proposed rule change would not change the existing execution process for incoming RAES orders that are submitted prior to a locked or crossed market.<sup>9</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2004-52) is approved.

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. 34-50903; File No. SR-CBOE-2004-84]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees

December 21, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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

<sup>8</sup> 15 U.S.C. 78f(b)(5). Section 6(b)(5) of the Act requires that the rules of a national securities exchange be "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, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers."

<sup>9</sup> These orders would continue to be executed in accordance with the RAES procedures set forth in CBOE Rule 6.8.

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

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

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 13, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "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 CBOE. The proposed rule change has been filed by CBOE as establishing or changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing. 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 amend its Fee Schedule to (i) make certain fee changes, and (ii) adopt a communication review fee. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at 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. 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, Proposed Rule Change

###### 1. Purpose

CBOE proposes to: (i) Amend its Annual FOCUS Report Filing Fee, Firm FOCUS Minimum Monthly Fee, Order Routing System ("ORS") Order Cancellation Fee and Floor Broker Workstation ("FBW") Fees; and (ii) adopt a Communication Review Fee. The Exchange also proposes to delete from its Fee Schedule certain fees that it represents are now outdated. The Exchange proposes to amend the following fees:

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

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

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

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

<sup>3</sup> See letter from David Doherty, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 22, 2004, and accompanying Form 19b-4 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 50673 (November 16, 2004), 69 FR 67971.

<sup>5</sup> Such orders are executed against market makers participating in the Exchange's Retail Automated Execution System ("RAES"). CBOE Rule 6.8(d).

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