

*Electronic Comments*

- Use the Commission's Internet comment form at <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-BSE-2005-16 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 No. SR-BSE-2005-16. 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, 100 F Street, NE., Washington, DC 20549. 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-2005-16 and should be submitted on or before August 17, 2005.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52068; File No. SR-CBOE-2005-57]

**Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the 80/20 Test of the Plan for the Purpose of Creating and Operating an Intermarket Linkage**

July 20, 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 19, 2005, 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, II, and III 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.

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

The Exchange proposes to amend its rules governing the operation of the Intermarket Linkage ("Linkage"). The Exchange is proposing to modify the "80/20 Test" in determining limitations on Principal Order access. The text of the proposed rule change is available on CBOE's Web site (<http://www.cboe.com>), at the 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, 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 filing is to modify the so-called "80-20 Test" ("Test") in Exchange Rule 6.85. The Rule states that Market-Makers should send Principal Orders through the Linkage on a limited basis and not as a primary aspect of their business.<sup>3</sup> The Test implements this general principle by prohibiting a Market-Maker from sending Principal Orders in an eligible option class if, in the last calendar quarter, the Market-Maker's Principal Order contract volume is disproportionate to the Market-Maker's contract volume executed against customer orders in its own market.

The Exchange believes that applying the Test has resulted in anomalies for Market-Makers with limited volume in an eligible option class. Specifically, if a Market-Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market-Maker failing to meet the Test. This would bar the Market-Maker from using the Linkage to send Principal Orders in that options class for the following calendar quarter. The Exchange believes that it was not the intent of the Participants to bar Market-Makers with limited volume from sending Principal Orders through the Linkage in these circumstances since such trading clearly was not "a primary aspect of their business." Thus, the filing proposes to create a *de minimis* exemption from the Test for Market-Makers that have total contract volume of less than 1000 contracts in an options class for a calendar quarter.

This filing comports to Linkage Plan Joint Amendment No. 17, which is currently pending Commission approval.

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,

<sup>3</sup> A Principal Order is an order for the account of an Eligible Market-Maker that does not relate to a customer order the Market-Maker is holding. See Exchange Rule 6.80(12)(ii).

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

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

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

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

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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*

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 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 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-2005-57 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-2005-57. 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, 100 F Street, NE., 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-2005-57 and should be submitted by August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52073; File No. SR-CBOE-2005-54]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to an Extension of the Linkage Fee Pilot Program**

July 20, 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 12, 2005, 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 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 parties and is approving

the proposed rule change on an accelerated basis.

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

The Exchange proposes to amend its Fees Schedule to extend until July 31, 2006 the current pilot program applicable to options intermarket linkage ("Linkage") fees. 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 III 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, Proposed Rule Change*

##### 1. Purpose

The Exchange's fees for Principal ("P") and Principal Acting as Agent ("P/A") orders<sup>3</sup> are operating under a pilot program scheduled to expire on July 31, 2005.<sup>4</sup> The Exchange proposes to amend its Fees Schedule to extend the pilot program until July 31, 2006.<sup>5</sup>

Pursuant to the current pilot program, the Exchange assesses its members the

<sup>3</sup> Under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage ("Plan") and Exchange Rule 6.80(12), which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel Order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) "P/A Order," which is an order for the principal account of a specialist (or equivalent entity) at another Participant Exchange that is authorized to represent Public Customer orders, reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "P Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

<sup>4</sup> See Securities Exchange Act Release No. 50048 (July 20, 2004), 69 FR 45102 (July 28, 2004) (SR-CBOE-2004-40).

<sup>5</sup> The Exchange also proposes the correction of a typographical error in the text of Footnote 8 of the CBOE Fees Schedule.

<sup>6</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.