

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52348; File No. SR-CBOE-2005-57]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change Relating to the 80/20 Test of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

August 26, 2005.

#### I. Introduction

On July 19, 2005, the Chicago Board Options Exchange, Incorporation ("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 seeking to modify the 80/20 Test in determining limitations on Principal Order<sup>3</sup> access under the rules imposed by Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")<sup>4</sup> and related rules.

The proposed rule change was noticed for comment in the **Federal Register** on July 27, 2005.<sup>5</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The purpose of the proposed rule change is to modify the 80/20 Test contained in Exchange Rule 6.85. The Rule provides that Market-Makers should send Principal Orders through the Linkage on a limited basis and not as a primary aspect of their business. 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 the Linkage Plan 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 proposed rule change proposes to create a *de minimis* exemption from the 80/20 Test for Market-Makers that have total contract volume of less than 1,000 contracts in an options class for a calendar quarter.

#### II. Discussion

After careful review, 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> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>7</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that the proposed rule change will increase the availability of Linkage to members of the Participants by limiting the applicability of the 80/20 Test in situations where market makers have minimal trading volume in a particular options class.

The Commission recognizes that the Exchange does not believe that it is necessary to bar market makers with limited volume from sending Principal Orders through the Linkage, as such trading does not raise concerns that a member is sending such orders as "a primary aspect of their business." The

Commission believes that the *de minimis* exemption from the 80/20 Test proposed by the Exchange for market makers that have a total contract volume of less than 1,000 contracts in an options class for a calendar quarter should ensure that specialists and ROTs with relatively low volume in a particular options class can send a reasonable number of Principal Orders without being barred from using the Linkage by application of the 80/20 Test in the following calendar quarter.

#### III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-2005-57) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52347; File No. SR-ISE-2005-23]

### Self-Regulatory Organizations; International Stock Exchange, Inc.; Order Approving Proposed Rule Change Establishing a De Minimis Exception to the 80/20 Test

August 26, 2005.

#### I. Introduction

On May 13, 2005, the International Stock Exchange, Inc. ("ISE" 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 seeking to amend ISE Rule 1904 to establish a *de minimis* exception to the 80/20 Test limiting market makers' use of Principal Orders<sup>3</sup> under the rules

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

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

<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> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by Amex, Chicago Board Options Exchange, Inc., and International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc., Pacific Exchange, and Boston Stock Exchange, Inc. joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>5</sup> See Securities Exchange Act Release No. 52068 (July 20, 2005), 70 FR 43473.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> The Exchange defines a Principal Order as an order for the principal account of a market maker (or equivalent entity on another Participant Exchange) and which is not a Principal Acting as Agent Order. See Chapter 19, Rule 1900(10)(ii) of the ISE Rules.