

effect, with the increase in liability to 25 contracts, while the Participants continue to discuss with Commission staff the information necessary to permit the Commission to evaluate possible permanent approval of the Trade-Through limitation. The proposed increase in the limit on liability would become effective on July 1, 2004, when the current pilot expires. The Participants propose no change to the time period in the trading day during which the limit would apply.

II. Implementation of the Plan Amendment

The Participants propose to make the proposed amendment to the Linkage Plan reflected in this filing effective on July 1, 2004.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Joint Amendment No. 12 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. Please include File Number 4-429 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 Joint Amendment No. 12 to File Number 4-429. 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 Linkage Plan amendment that are filed with the Commission, and all written communications relating to the proposed Linkage Plan amendment 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 Participants. 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 Joint Amendment 12 to File Number 4-429 and should be submitted on or before June 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04-11262 Filed 5-18-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49694; File No. PCAOB-2003-09]

Public Company Accounting Oversight Board; Order Approving Proposed Rule and Application Instructions Governing Withdrawal From Registration

May 13, 2004.

I. Introduction

On October 15, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed a Form 19b-4 with the Securities and Exchange Commission (the "Commission") pursuant to Sections 102 and 107 of the Sarbanes-Oxley Act of 2002 (the "Act"), consisting of a proposed rule and application form completion instructions governing withdrawal from registration (collectively the "proposed rule"). Notice of the proposed rule was published in the **Federal Register** on April 8, 2004.¹ The Commission received one comment letter. For the reasons discussed below, the Commission is granting approval of the proposed rule.

II. Description

The Act established the PCAOB to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration, standard setting, inspections, and disciplinary programs.

In furtherance of the registration requirement in Section 102 of the Act, the PCAOB adopted registration rules on April 23, 2003. The Commission approved those rules on August 1, 2003, following a public comment period. The registration rules do not address the process by which a registered public accounting firm may cancel, rescind or withdraw its registration with the PCAOB. Accordingly, the Board published a proposed registration withdrawal rule and related withdrawal application form completion instructions for public comment on July 28, 2003 (PCAOB Release No. 2003-014). The PCAOB revised the proposed rule in response to three letters it received during the comment period. The PCAOB adopted the proposed rule, as revised, and concurrently authorized submission of the proposed rule to the Commission for approval. The proposed rule was filed with the Commission pursuant to the requirements of Section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act").

The PCAOB has proposed a rule and instructions for completion of an application form (Form 1-WD) to govern the process by which public accounting firms may request leave to withdraw from registration. Under the proposed rule, a registered firm may seek to withdraw at any time by filing Form 1-WD. However, withdrawal from registration is not automatic. The PCAOB may order that withdrawal be delayed while the Board conducts a related inspection, investigation, or disciplinary proceeding. The PCAOB may delay a requested withdrawal for up to 18 months, and, under the rule, that period shall automatically be extended to cover any period necessary to complete a disciplinary proceeding initiated prior to the expiration of the 18-month period.

The proposed rule also provides that, if the PCAOB determines within three years of granting a request for withdrawal that the withdrawal application form contained a material misstatement or omission, the Board may void the withdrawal retroactively. The PCAOB wants to provide a basis for inspecting, investigating and potentially disciplining a registered firm that made a false or misleading statement in its withdrawal application. Because the PCAOB's regulatory authority is greatest over entities registered with the Board, the proposed rule provides that the registration of a suspect firm shall be reinstated, effective from the date of the deemed withdrawal.

While a request for leave to withdraw is pending, the applicant may not

¹² 17 CFR 200.30-3(a)(29).

¹ Release No. 34-49520 (April 2, 2004); 69 FR 18656 (April 8, 2004).

engage in the preparation or issuance of, or play a substantial role in preparing or furnishing, a public company audit report, other than to issue consent to the use of an audit report for a prior period. In addition, a firm that has filed a Form 1-WD may not publicly hold itself out as registered with the PCAOB without disclosing that its registration status is "registered—withdrawal request pending."

The American Institute of Certified Public Accountants (the "AICPA") submitted to the Commission a comment letter dated April 29, 2004. The comment letter contains a restatement of the points made by the AICPA in a letter dated August 18, 2003 on the proposed rule released by the PCAOB for public comment on July 28, 2003. The PCAOB gave careful consideration to the comments received from the AICPA and two other commenters in the course of revising the proposed rule prior to its adoption by the Board.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule is consistent with the requirements of the Act and the securities laws and is necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed rule (File No. PCAOB-2003-09) be and hereby is approved.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04-11263 Filed 5-18-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49699; File No. SR-CBOE-2003-42]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to the Retail Automatic Execution System

May 13, 2004.

On October 1, 2003, the Chicago Board Options Exchange, Inc. ("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"),¹ and Rule 19b-4 thereunder,² a proposed rule change regarding the execution of certain broker-dealer orders. The proposed rule change was published for comment in the **Federal Register** on November 7, 2003.³ The Commission received no comment letters on the proposal. On May 5, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.⁴ This order approves the proposed rule change, as amended. The Commission also seeks comment on Amendment No. 1 from interested persons.

I. Description of the Proposal

The CBOE proposes to amend CBOE Rule 6.8, Interpretation and Policy .01, to allow broker-dealer orders that are eligible for execution on CBOE's Retail Automatic Execution System ("RAES") to execute automatically against limit orders on the CBOE book in classes designated by the appropriate Floor Procedure Committee. The proposed rule change would permit broker-dealer orders to execute automatically against customer limit orders on the book provided that such customer orders are at the national best bid or offer ("NBBO"). However, the proposed rule change provides that proprietary orders of an Order Entry Firm or its affiliates, or orders solicited by the Order Entry Firm from members or non members (collectively, "Order Entry Firm Orders"), may not automatically execute against a customer limit order on the limit order book that was placed on the book by the Order Entry Firm unless the customer order has been exposed on the book for at least thirty seconds. Finally, the proposed rule change specifies that it shall be a violation of the proposed rule for any Exchange member or member organization to be a party to any arrangement designed to circumvent the proposed rule by allowing a customer, member, member organization or non-member broker-

dealer to execute immediately against agency orders delivered to the Exchange whether such orders are delivered via the CBOE ORS system or represented in the trading crowd.

II. Discussion

The Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of section 6 of the Act⁶ and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,⁷ which, among other things, requires that the CBOE's rules 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 a national market system, and, in general, to protect investors and the public interest.

The Commission anticipates that the ability for broker-dealer orders on RAES to execute against customer limit orders on the book should help to provide faster execution of both eligible broker-dealer orders and eligible customer limit orders, while reducing the burden on the Exchange's members to manually execute these orders. The Commission believes that the proposal should benefit customers using the RAES system, as well as customers whose orders are residing in the Exchange's customer limit order book. Moreover, the Commission finds that the proposed rule change that requires a customer limit order to be exposed on the book for 30 seconds before an Order Entry Firm Order can execute against it addresses the concern that Order Entry Firms could use this proposed rule change to internalize or cross orders. The Commission notes that CBOE represented that it has developed a surveillance procedure to enforce compliance with this provision by its members.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 contains the proposed language relating to the thirty-second exposure of customer limit orders on the book. In

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48721 (October 30, 2003), 68 FR 63158.

⁴ See letter from Angelo Evangelou, Attorney, CBOE, to Kelly Riley, Assistant Director, Division of Market Regulation, Commission, dated May 4, 2004 ("Amendment No. 1"). In Amendment No. 1, the CBOE modified the proposed rule change by providing that neither proprietary orders of an Order Entry Firm that submitted a customer order for placement on the limit order book, orders from any firm affiliated with the Order Entry Firm, nor orders solicited by the Order Entry Firm from members or non-member broker-dealers may execute (automatically or otherwise) against the customer limit order unless the customer limit order is exposed on the book for at least thirty (30) seconds. In addition, the CBOE amended the proposed rule change to provide that it be adopted as a pilot program ending on November 30, 2004.

⁵ In approving this proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).