

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49867; File No. SR-CBOE-2004-29]

### Self-Regulatory Organizations; Notice of Filing an Order Granting Accelerated Approval to a Proposed Rule Change, and Amendment No. 1 thereto, by the Chicago Board Options Exchange, Incorporated Proposing to Extend a Pilot Program Relating to Certain Limitations on Trade-Through Liability.

June 15, 2004.

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 May 11, 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 and II below, which Items have been prepared by the CBOE. The CBOE filed Amendment No. 1 to the proposed rule change on June 2, 2004.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to grant accelerated approval to the proposed rule change, as amended.

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

The CBOE is proposing to extend a pilot program relating to certain limitations on Trade Through<sup>4</sup> liability during the last seven minutes of the trading day pursuant to the Linkage Plan. The text of the proposed rule change is available at the Exchange and at the Commission.

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

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

<sup>3</sup> See letter from Angelo Evangelou, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 2, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange made technical corrections to the proposed rule text submitted to the Commission.

<sup>4</sup> A "Trade-Through" is defined as a transaction in an options series at a price that is inferior to the national best bid or offer in an options series calculated by a Participant. See Section 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"). A "Participant" is defined as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. See Section 2(24) of the Linkage Plan. Currently, the Participants in the Linkage Plan are the International Securities Exchange, Inc., the American Stock Exchange LLC, the CBOE, the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the Boston Stock Exchange, Inc.

#### 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 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, the Proposed Rule Change

###### 1. Purpose

The CBOE has represented that the purpose of the proposed rule change is to conform CBOE Rule 6.83 to a recent Linkage Plan amendment to extent the pilot provision limiting Trade-Through liability during the last seven minutes of the trading day.<sup>5</sup> Pursuant to the pilot currently in effect, an Exchange member's Trade-Through liability is limited to 10 contracts per Satisfaction Order<sup>6</sup> for the time period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

The Participants are proposing to extend the pilot for an additional seven months, until January 31, 2005. In addition, the Participants are proposing to increase the limit on Trade-Through liability during the last seven minutes of the trading day from 10 contracts to 25 contracts per Satisfaction Order. This increase in the limit on Trade-Through liability would be effective on July 1, 2004, when the current pilot expires.

<sup>5</sup> The CBOE has separately filed Joint Amendment No. 12 to the Linkage Plan to implement substantially the same change to the Linkage Plan. See Securities Exchange Act Release No. 49692 (May 12, 2004), 69 FR 29956 (May 19, 2004) (Notice of Joint Amendment No. 12). The Commission previously approved the pilot to implement a limitation on Trade-Through liability during the last seven minutes of the trading day on a 120-day temporary basis on January 31, 2003. See Securities Exchange Act Release No. 47298, 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. See Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4). The Commission subsequently extended the pilot until June 30, 2004. See Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

<sup>6</sup> A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage to notify a member of another Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. See Section 2(16) of the Linkage Plan.

The time period during the trading day in which this limit would apply would remain the same, from five minutes prior to the close of trading in the underlying security until the close of trading in the options class.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</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, and protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will result in 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. 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-2004-29 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-2004-29. 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

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 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-2004-29 and should be submitted on or before July 15, 2004.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</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>10</sup> which requires, among other things, that the rules of a national securities 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 a national market system, and to protect investors and the public interest. As discussed in Joint Amendment No. 12, as a condition to granting permanent approval of the Trade-Through limitation, the Commission required that the Participants provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the "Report"). The Participants have provided the Commission with certain

information required in the Report, and continue to discuss with Commission staff what additional information the staff may need to evaluate possible permanent approval of the Trade-Through limitation. The Commission believes that extending the pilot will enable Participants to continue to compile the data necessary for the Commission to determine whether permanent approval of the proposed rule change is appropriate and in the public interest. The Commission further believes that raising the limitation in liability for Satisfaction Orders during the last seven minutes of the trading day from 10 contracts to 25 contracts for this pilot period should help to protect investors and promote the public interest.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the CBOE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 12, which was published for public comment in the **Federal Register** on May 19, 2004.<sup>11</sup> The Commission received no comments in response to public of Joint Amendment No. 12. The Commission believes that no new issues of regulatory concern are being raised by the CBOE's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.<sup>12</sup>

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-CBOE-2004-29), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49866; File No. SR-ISE-2004-14]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the International Securities Exchange, Inc. Relating to Limitations on End-of-Day Trade-Through Liability

June 15, 2004.

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 May 14, 2004, 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 ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the proposed rule change.

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

The ISE is proposing two changes to the current limitations on Trade-Through<sup>3</sup> liability during the last seven minutes of the trading day pursuant to the Linkage Plan. First, the limit on Trade-Through liability would be raised from 10 contracts to 25 contracts per Satisfaction Order as of July 1, 2004. Second, the pilot program that implemented a limitation on liability would be extended to January 31, 2005.

The text of the proposed rule change is available at the Exchange and at the Commission.

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

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

<sup>3</sup> A "Trade-Through" is defined as a transaction in an options series at a price that is inferior to the national best bid or offer in an options series calculated by a Participant. See Section 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"). A "Participant" is defined as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. See Section 2(24) of the Linkage Plan. Currently, the Participants in the Linkage Plan are the ISE, the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the Boston Stock Exchange, Inc.

<sup>9</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>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See *supra* note 5.

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

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).