

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. Please include File Number SR-BSE-2004-57 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-BSE-2004-57. 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 Room. Copies of such filing also will be available for inspection and copying at the principal offices 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-2004-57 and should be submitted on or before January 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3877 Filed 12-28-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50920; File No. SR-CBOE-2004-81]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board of Options Exchange, Incorporated Relating to Amending Rule 30.20 To Conform to the Requirements of Regulation SHO

December 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ notice is hereby given that on December 8, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities Exchange Commission ("Commission") 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

CBOE proposes to amend CBOE Rule 30.20 to conform to the requirements of Regulation SHO.² The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.³

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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission on July 23, 2004 adopted Regulation SHO ("Reg SHO") to address short sales of securities and

to create uniform rules relating to the short selling of securities.⁴ The purpose of this rule is to amend existing Exchange rules relating to short sales to bring them into conformity with the requirements of Reg SHO.

The Exchange proposes to amend Rule 30.20, as described below.

Rule 30.20(a): The Exchange amends this paragraph to require that all orders to sell a security be market either long, short, or short exempt.

Rule 30.20(b): The Exchange amends this paragraph to incorporate a reference to Exchange Act Rule 242.202T.⁵

Rule 30.20(c): The Exchange eliminates the entire text of paragraph (c) in favor of language referencing the Commission's "Locate and Delivery Requirements for Short Sales." As amended, new paragraph (c) provides that no member or member organization shall accept, represent or execute for his or its own account or the account of any other person an order to sell a security subject to the rules in this Chapter unless such member or member organization complies with Exchange Act Rule 242.203.

Rule 30.20.02: The Exchange amends this Interpretation to provide that the terms long, short, and short exempt will have the same meaning as in Exchange Act Rule 242.200.

Rule 30.20.03: The Exchange proposes to delete existing Interpretation .03, which is specific to a product (SuperShares) that the Exchange never traded.

Rule 30.20.04: The Exchange proposes to revise current Interpretation .04 to include new text referencing the Exchange Act Rules governing the requirements for long sales (Exchange Act Rule 242.203(a)) and short sales (Exchange Act Rule 242.203(b)). The Exchange also proposes to clarify that the requirements members currently must satisfy in order to make an affirmative determination for short sales shall continue to be required for documenting compliance with Exchange Act Rule 242.203(b)(1). In this respect, the requirements remain the same.

⁴ *Id.*

⁵ Rule 202T provides a procedure for the Commission to suspend, on a pilot basis, the trading restrictions of the Commission's short sale price test, as well as any short sale price test of any exchange or national securities association, for short sales in such securities as the Commission designates by order as necessary or appropriate in the public interest and consistent with the protection of investors, after giving due consideration to the security's liquidity, volatility, market depth and trading market. Rule 202T makes explicit that no SRO "shall have a rule that is not in conformity with or conflicts with" the suspension of a price test for the securities selected for the pilot.

¹ 15 U.S.C. 78(b)(1).

² See Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) ("Adopting Release").

³ Exhibit A is available at <http://www.sec.gov/rules/sro.shtml>.

¹⁰ 17 CFR 200.30-3(a)(12).

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)⁶ 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 Act⁷ and subparagraph (f)(6) of Exchange Act Rule 19b-4.⁸ 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.⁹

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. 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/>

⁹ 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.¹⁰

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"),¹ and Rule 19b-4 thereunder,² 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

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).