

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49814; File No. SR-CBOE-2004-33)

June 4, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Frequency of Executions on the Hybrid Trading System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 19, 2004, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 CBOE proposes to adopt a rule governing the frequency with which certain professional orders may be submitted for automatic execution in the Hybrid Trading System (“Hybrid”). Below is the text of the proposed rule change. Proposed new language is italicized.

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Rule 6.13: CBOE Hybrid System’s Automatic Execution Feature

(a) No change

(b) Automatic Execution

(i) Eligibility: Orders eligible for automatic execution through the CBOE Hybrid System may be automatically executed in accordance with the provisions of this Rule. This section governs automatic executions and split-price automatic executions. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

automatic execution and allocation of orders or quotes submitted by market participants shall be governed by Rules 6.45A(c) and (d).

(A) - (B) No change

(C) Access:

(i) – (ii) No Change

(iii) 15-Second Limitation: With respect to orders eligible for submission pursuant to paragraph (b)(i)(C)(ii), members shall neither enter nor permit the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The appropriate FPC may shorten the duration of this 15-second period by providing notice to the membership via a Regulatory Circular that is issued at least one day prior to implementation.

(ii) - (iv) No change

(c) – (e) No change

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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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that all of the floor-based options exchanges have rules generally restricting the entry of certain orders into their automatic execution systems to one

order per 15 seconds per beneficial account.³ CBOE has a 15-second rule applicable to its RAES system (see CBOE Rule 6.8(e)(iii)) but not to its Hybrid auto-ex system. The purpose of this rule filing is to adopt a 15-second rule applicable to certain professional orders entered for execution through CBOE’s Hybrid system.

The Exchange proposes new CBOE Rule 6.13(b)(i)(C)(iii) to adopt rule language similar to that currently in effect in CBOE Rule 6.8(e)(iii).⁴ As applied, the rule would prohibit members from entering or permitting the entry of multiple orders on the same side of the market in an option class within any 15-second period for an account or accounts of the same beneficial owner. The proposed language also allows the appropriate floor procedure committee (“FPC”) to shorten the duration of this 15-second timer by providing advance notice to the membership via Regulatory Circular. The timer may never exceed 15-seconds and, if shortened, would serve to allow the entry of more orders.

The Exchange also proposes to limit to whom the rule applies. The Exchange represents that while all of the floor-based options exchanges’ rules, including CBOE Rule 6.8(e)(iii) broadly apply to all orders (i.e., from customers and broker-dealers), the proposed amendment to CBOE Rule 6.13 would apply only to orders from options exchange market makers and stock exchange specialists, as defined in CBOE Rule 6.13(b)(i)(C)(ii).⁵ Customers and broker-dealers

³ See, e.g., CBOE Rule 6.8(e)(iii), Amex Rule 933(e), PCX Rule 6.87(d)(2), and Phlx Rule 1080(c)(ii)(B)(3). NYSE Rule 1005 contains a 30-second limitation.

⁴ There is one minor difference in the rule language of CBOE Rule 6.8 and that which is proposed in CBOE Rule 6.13: the use of the word “issue” in CBOE Rule 6.8 versus the use of the word “class” in CBOE Rule 6.13. “Issue” and “class” are synonymous, however, “issue” is not a defined term in CBOE’s rules while “class” is.

⁵ In SR-CBOE-2004-15, the Exchange proposed modifications to the definitions contained in this paragraph. On May 13, 2004, the Commission published the rule filing in the Federal Register. See Exchange Act Release No. 49659 (May 6, 2004), 69 FR 26627. If approved, the new rule language will be as appears below. Nothing in the instant

(as described in CBOE Rule 6.13(b)(i)(C)(i)) will not be subject to the rule and as such will continue to be eligible to receive unlimited automatic executions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁶ in general and furthers the objectives of Section 6(b)(5)⁷ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating

proposed rule change proposes to change either of those definitional subparagraphs. Rather, the instant proposal merely clarifies that both of those categories (*i.e.*, options exchange market makers and stock exchange specialists) will be subject to the 15-second restriction.

(ii) (A) Options Exchange Market Makers: The appropriate FPC may also determine, on a class-by-class basis, to allow orders for the accounts of market makers or specialists on an options exchange (collectively “options market makers”) who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to Section 7(c)(2) of the Securities Exchange Act of 1934 to be eligible for automatic execution. The appropriate FPC may establish the maximum order size eligibility for such options market maker orders at a level lower than the maximum order size eligibility available to non-broker-dealer public customers and non-market maker or non-specialist broker-dealers. Pronouncements pursuant to this provision regarding options market maker access shall be made by the appropriate FPC and announced via Regulatory Circular.

(B) Stock Exchange Specialists: The appropriate FPC may determine, on a class-by-class basis, to allow orders for the account of a stock exchange specialist, with respect to a security in which it acts as a specialist, to be eligible for automatic execution in the overlying option class. The appropriate FPC may establish the maximum order size eligibility for such specialist orders at a level lower than the maximum order size eligibility available to options exchange market makers. Stock exchange specialists, with respect to orders in securities in which they do not act as specialist, will be treated as broker-dealers that are not market makers or specialists on an options exchange and will be eligible to submit orders for automatic execution in accordance with subparagraph (i) above.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

CBOE neither solicited nor received written comments on 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. Please include SR-CBOE-2004-33 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 SR-CBOE-2004-33. 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, 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 SR-CBOE-2004-33 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).