

agreement, the Back-up Exchange will apply the per contract and per contract side fees normally applicable to exclusively listed options under the Disabled Exchange's fee schedule, the Commission believes that the proposed rule change appears to be reasonably designed to minimize the disruption associated with back-up trading of such options. The proposal also clarifies that, with regard to singly listed and multiply listed options, the fees charged shall be those set forth in the Back-up Exchange fee schedule where trading occurs at a Back-up Exchange, or, where trading occurs at CBOE, the CBOE fee schedule.

The Commission finds good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,¹⁸ to approve the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

Amendment No. 4 simply corrects a reference to "Back-up Exchange" in Section (d)(2) of CBOE Rule 6.16. Likewise, Amendment No. 5 changes the number of the footnote CBOE proposes to add to its Fee Schedule from 17 to 16 to avoid a gap in the numbering of the notes. Because Amendment Nos. 4 and 5 propose minor corrections to the rule text that are consistent with the clear intent of the proposal, the Commission finds that it is appropriate to approve Amendment Nos. 4 and 5 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 4 and 5, including whether each of these amendments 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-CBOE-2004-59 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-2004-59. 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 File Number SR-CBOE-2004-59 and should be submitted on or before June 15, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-CBOE-2004-59), as amended by Amendment Nos. 1, 2 and 3, is hereby approved, and that Amendment Nos. 4 and 5 to the proposed rule change are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51720; File No. SR-CBOE-2005-33]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Increased Class Quoting Limits in AAPL, GOOG, MNX, QQQQ

May 19, 2005.

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 April 21, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 increase the class quoting limits in a select number of active options classes. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), the Office of the Secretary, CBOE and at the Commission.

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 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 Commission approved the Exchange's Remote Market-Maker ("RMM") program ("Program") on March 14, 2005.⁵ CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005).

¹⁸ 15 U.S.C. 78f(b)(5) and 78s(b).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

Product, establishes class quoting limits ("CQLs") for each class traded on the Hybrid Trading System.⁶ A CQL is the maximum number of quotes that may quote electronically in a given product and the current levels are established from 25–40, depending on the trading activity of the particular product.

CBOE Rule 8.3A.01(c) provides a procedure by which the President of the Exchange may increase the CQL for a particular product. In this regard, the President of the Exchange may increase the CQL in exceptional circumstances, which are defined in the rule as " * * * substantial trading volume, whether actual or expected."⁷ The effect of an increase in the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQLs for four products trading on the Exchange: Apple Computer (AAPL), options on the Nasdaq-100 Index Tracking Stock (QQQQ), options on the mini-Nasdaq 100 index (MNX), and Google (GOOG). Specifically, the Exchange proposes to increase the CQLs in these products by the following amounts: AAPL CQL increased by 4; MNX CQL increased by 4; QQQQ CQL increased by 2; and GOOG CQL increased by 3.

Each of these products routinely is among the most actively-traded on the Exchange for both index and equity products and, therefore, there is substantial trading volume in each of these products. Increasing the CQLs in each of these products will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets. Each of these products has a "waiting list" of market participants waiting to quote and, per CBOE Rule 8.3A's requirements, quoting spots will be offered on a time priority basis, starting with the first person on each list. The Exchange represents that it will comply with all of the requirements of CBOE Rule 8.3A in increasing the CQLs in these products and, if it determines subsequently to reduce such CQLs, in reducing the CQLs in these products.⁸ Changes to the CQLs

will be announced to the membership via Information Circular.

2. Statutory Basis

The CBOE believes that 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 Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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

The CBOE does not believe that the proposed rule change will impose 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

The Exchange 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

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act¹¹ and Rule 19b-4(f)(1) thereunder,¹² because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the 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 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 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-2005-33 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 File Number SR-CBOE-2005-33. 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 Room. 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-2005-33 and should be submitted on or before June 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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⁶ See CBOE Rule 8.3A.01.

⁷ "Any actions taken by the President of the Exchange pursuant to this paragraph will be submitted to the SEC in a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act." CBOE Rule 8.3A.01(c).

⁸ The Exchange has represented that it will follow the procedures outlined in CBOE Rule 8.3A.01(a) for assigning new CQLs, based on revised trading volume statistics, at the end of the calendar quarter and that if the new CQLs are lower than the increased CQLs assigned as a result of this proposed rule change, the procedures outlined in CBOE Rule 8.3A.01(a) will be followed. Telephone conversation of May 18, 2005, between Patrick

Sexton, Assistant General Counsel, CBOE and David Michehl, Attorney, Division of Market Regulation, Commission.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A)(i).

¹² 17 CFR 240.19b-4(f)(1).

¹³ 17 CFR 200.30-3(a)(12).