

Ticket could not be modified and would be stored by the Exchange as a JPEG file.

Once the order is systematized in Order Ticket, the member or member organization that accepted the order would be required to transfer the order terms into BARS so that a record of the order may be maintained in the Exchange's AOF system and any trade information submitted to comparison. In order to enter the order into BARS, a floor broker or clerk would open a BARS OET on a saved Order Ticket by selecting a new OET button within the image. This would cause both the time stamp and the sequence number from the Order Ticket to be automatically transferred from the Order Ticket to the OET. The transfer of the time stamp and sequence number would be done by the Exchange's systems and could not be modified by the broker or clerk. The broker or clerk then would be required to enter the required order terms into the OET and transmit the order to AOF. The broker or clerk also would be required to enter any information pertaining to a modification or cancellation of an order, or the execution of an order, directly into BARS from where it would be transmitted to AOF. Information pertaining to order modifications and cancellations would be required to be systematized prior to representation of the revised order in the crowd.

The Exchange further proposes that any proprietary system approved by the Exchange on the Exchange's trading floor which receives orders would be considered an Exchange system for the purpose of systematizing those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system prior to representing the orders in the crowd. Any proprietary system approved by the Exchange would be required to have the functionality to comply with the requirements of COATS.

Under the proposed rule change, orders for FLEX options and accommodation trades would not have to be systematized prior to representation. Information about these orders would be required to be submitted to the Exchange on trade date no later than 10 minutes after the close of trading. The Exchange would maintain information submitted to it pertaining to FLEX options and accommodation trades in the COATS format.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act

and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,⁸ which requires among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to 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 believes that the rules as proposed should allow the Exchange to comply with its obligations under the Order in that they will result in the creation of an audit trail that incorporates manual orders sent to Amex. Specifically, the proposed rule change requires that Amex members enter certain order details immediately upon receipt, prior to representation of the order, into BARS or in the Order Ticket enhancement to BARS for later integration into COATS, which the Commission believes should result in an accurate, time-sequenced record of orders.

The Commission notes that the Exchange has acknowledged the need for effective and proactive surveillance for activities such as trading ahead and front-running in connection with the creation of its audit trail. The Exchange represents that it currently conducts automated surveillance for such activities and will incorporate a review of order systemization as part of such surveillance. The Exchange also states that it intends to implement supplementary surveillance and examination programs related to the systemization of orders requirement promptly after this requirement is instituted, which are designed to address, among other things, trading ahead and front-running. The Commission views effective surveillance as critical to the integrity of COATS and expects that the Exchange will inform the Commission of any problems it encounters in conducting effective surveillance.

The Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 thereto, prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change was noticed for a 15-day

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

comment period and no comments were received. The Commission believes that it is appropriate to accelerate approval of the proposed rule change and Amendment No. 1 thereto so that the rule may be implemented on a timely basis to ensure prompt compliance with the undertakings contained in the Commission's Order.

V. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Amex-2003-90) and Amendment No. 1 are approved on an accelerated basis.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50994; File No. SR-CBOE-2004-90]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to a Delay of the Operative Period for Rule 6.45A(c)(iii)

January 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ notice is hereby given that on December 28, 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, 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

The Exchange proposes to delay implementation of recently approved CBOE Rule 6.45A(c)(iii). The text of the

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78(b)(1).

proposed rule change is available at 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 parts of such statements. The CBOE has designated this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(3) thereunder,³ 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.

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

On December 1, 2004, the Commission approved a CBOE proposal that eliminated the DPM participation entitlement in "N-second" group trades.⁴ The Exchange anticipated implementing this rule change during December expiration week, however, unforeseen programming delays necessitate postponing implementation until January. In this regard, CBOE proposes to delay the operative period of recently-approved CBOE Rule 6.45A(c)(iii) until no later than January 31, 2005. Until such time that the Exchange rectifies these programming issues, DPMs will continue to be entitled to receive their guaranteed participation entitlement.

CBOE 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 Act.⁵ 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 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)(iii) of the Act⁷ and Rule 19b-4(f)(3) thereunder,⁸ because it is concerned solely with the administration of the Exchange. 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 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-2004-90 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-2004-90. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed 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 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-2004-90 and should be submitted on or before February 3, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50996; File No. SR-CBOE-2004-77]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Systematizing of Orders in Connection With the Requirement To Design and Implement a Consolidated Options Audit Trail System

January 7, 2005.

I. Introduction

On November 24, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(3).

⁴ Exchange Act Release No. 50775 (Dec. 1, 2004), 69 FR 70731 (Dec. 7, 2004) (approving SR-CBOE-2004-64).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(3).

⁹ 17 CFR 200.30-3(a)(12).