

types of orders dictates they take longer to represent and negotiate.

Orders Received During a Trading Rotation: Orders received before or during a trading rotation (as defined in CBOE Rules 6.2, 6.2A, and 6.2B) would be exempt from the 30-second standard. During a rotation, CBOE systems attempt to find the opening price and until the opening price is established, there is no disseminated market. Once the trading rotation ends and regular trading begins, orders received before or during the trading rotation will be subject to the display requirement.<sup>9</sup>

Large Sized Orders: The Commission's Limit Order Display Rule provides a general exclusion for block size orders of at least 10,000 shares.<sup>10</sup> CBOE proposes to adopt a similar exception for large sized orders. Accordingly, there will be no obligation to display orders for more than 100 contracts, unless the customer placing such order requests otherwise.

Finally, CBOE proposes to relocate the last paragraph of CBOE Rule 8.85(b) to the introductory paragraph of CBOE Rule 8.85(b).<sup>11</sup> Nothing in the rule text changes other than its location within the rule.

## 2. Statutory Basis

The Exchange believes the proposal 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.<sup>12</sup> Specifically, CBOE believes the proposed rule change is consistent with the Section 6(b)(5) 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.<sup>13</sup> Furthermore, CBOE believes that the proposed changes are consistent with the Act's requirement that an

exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of 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. 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 Exchange 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, 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-2004-35 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-2004-35. 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 Exchange. 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-2004-35 and should be submitted on or before July 23, 2004.

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. 34-49919; File No. SR-CBOE-2004-36]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to a One-Month Extension of the \$5 Quote Width Pilot Program

June 25, 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 June 25, 2004, the Chicago Board Options Exchange, Inc. ("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 Exchange. The CBOE has submitted the proposed rule

<sup>9</sup> CBOE Rule 6.53(1) provides that orders may be designated as Opening Rotation orders. An opening rotation order is a market order that requires execution in whole or in part only during the opening rotation. Orders received before or during an opening rotation must be designated as opening rotation orders, otherwise the unexecuted portion automatically will be treated as an unexecuted limit order and will be displayed after the rotation ends.

<sup>10</sup> See 17 CFR 240.11Ac1-4(c)(4).

<sup>11</sup> This paragraph states, "To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (b)(i) through (b)(vii) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraphs (b)(i) through (b)(vii) of this Rule shall govern." This paragraph actually appears in two locations in Rule 8.85(b). The Exchange proposes to eliminate the second reference.

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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

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

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

change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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**

In January 2004, the CBOE implemented a six-month pilot program ("Pilot Program"), which expires on June 29, 2004, that permits quote spread parameters of up to \$5, regardless of the price of the bid, for up to 200 options classes traded on the CBOE's Hybrid Trading System ("Hybrid").<sup>5</sup> The CBOE subsequently expanded the Pilot Program to include all options classes traded on Hybrid<sup>6</sup> and limited the applicability of the \$5 quote spreads permitted under the Pilot Program to quotations that are submitted electronically to Hybrid.<sup>7</sup> The CBOE proposes to extend the Pilot Program through July 29, 2004. To prevent a lapse of the Pilot Program, the CBOE has asked the Commission to waive the 30-day operative delay in Rule 19b-4(f)(6)(iii).<sup>8</sup> The text of the proposed rule change appears below. Additions are italicized; deletions are bracketed.

#### **Rule 8.7 Obligations of Market-Makers**

- (a) No change.
- (b) No change.
- (i)-(iii) No change.
- (iv) No change.

(A) [For a six month period expiring on June 29, 2004] *Until July 29, 2004*, options on classes trading on the Hybrid system may be quoted electronically with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. The \$5 quote widths shall only apply to classes trading on the Hybrid system and only following the opening rotation in each security (*i.e.*, the widths specified in paragraph (b)(iv) above shall apply during opening rotation). Quotes given in open outcry in Hybrid classes may

not be quoted with \$5 widths and instead must comply with the legal width requirements (*e.g.*, no more than \$0.25 between the bid and offer for each option contract for which the bid is less than \$2) described in paragraph (iv) and not subparagraph (iv)(A).

### **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 Pilot Program became effective in January 2004 and designated 200 options classes that, for a six-month period, could be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid.<sup>9</sup> In February 2004, the CBOE expanded the number of options classes in the Pilot Program to include all options classes trading on Hybrid.<sup>10</sup> The CBOE subsequently limited the applicability of the \$5 quote spreads permitted under the Pilot Program to quotations that are submitted electronically to Hybrid.<sup>11</sup>

The Pilot Program expires on June 29, 2004. As part of the Pilot Program, the CBOE committed to prepare and submit to the Commission a report assessing the operation of the Pilot Program and, in particular, the quality of the quotations for the options included in the Pilot Program. The CBOE is in the process of preparing the report and anticipates submitting it to the Commission shortly. Given the impending expiration of the Pilot Program, however, the CBOE requests a one-month extension of the Pilot Program, through July 29, 2004, to allow the Commission to review the report and consider a subsequent CBOE request to make the Pilot Program permanent.

##### **2. Statutory Basis**

The 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.<sup>12</sup> Specifically, the CBOE believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</sup> 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 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.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The CBOE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup> Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 49153 (January 29, 2004), 69 FR 5620 (February 5, 2004) (notice of filing and immediate effectiveness of File No. SR-CBOE-2003-50) ("Pilot Notice").

<sup>6</sup> See Securities Exchange Act Release No. 49318 (February 25, 2004), 69 FR 10085 (March 3, 2004) (notice of filing and immediate effectiveness of File No. SR-CBOE-2004-10) ("February Notice").

<sup>7</sup> See Securities Exchange Act Release No. 49791 (June 2, 2004), 69 FR 32389 (June 9, 2004) (order approving File No. SR-CBOE-2004-20) ("June Order").

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> See Pilot Notice, *supra* note 5.

<sup>10</sup> See February Notice, *supra* note 6.

<sup>11</sup> See June Order, *supra* note 7.

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the 30-day operative delay to allow the CBOE to continue the Pilot Program without interruption for an additional 30 days, through July 29, 2004, while the Commission considers the Pilot Program report that the CBOE will submit to the Commission. The CBOE believes that the Pilot Program has been successful and has provided market makers with the ability to more accurately price options in all types of market conditions. For this reason, the CBOE believes that it is important from a liquidity-providing standpoint to allow the Pilot Program to continue uninterrupted.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the Pilot Program to continue without interruption through July 29, 2004.<sup>16</sup> For this reason, the Commission designates that the proposal become 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-36 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.

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-CBOE-2004-36. 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-2004-36 and should be submitted on or before July 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49924; File No. SR-DTC-2004-05]

#### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Look-Ahead Process

June 28, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 7, 2004, the Depository Trust Company ("DTC") 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 primarily by DTC, The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would allow DTC to expand the application of its Look-Ahead process to all equity transactions and to all valued pledge and valued release transactions.<sup>2</sup>

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

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

Currently, DTC's Look-Ahead process reduces transaction blockage for debt securities. To do so, the Look-Ahead processing system identifies a receive transaction pending due to a net debit cap insufficiency and determines if there is an offsetting delivery transaction pending because of a quantity deficiency in the same security that would permit both transactions to be completed in compliance with DTC's risk management system controls. The system calculates the net effect of offsetting transactions in the accounts of the three participants involved. If the net effect of the transaction is in positive risk management controls in all three accounts, the transactions will be completed. As a result of this reduced blockage, participants have experienced improved timeliness of transactions completing in the system, increased trade certainty, and improved straight-through processing.

To extend and benefits of the Look-Ahead process, DTC proposes to expand the Look-Ahead process to include all equity transactions and to include all valued pledge and valued release

<sup>2</sup> Look-Ahead processing is currently available for municipal and corporate bonds transactions pursuant to Securities Exchange Act Release No. 48007 (June 10, 2003), 68 FR 35744 (June 16, 2003) (File No. DTC-2003-07) (order allowing DTC to establish Look-Ahead processing).

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

<sup>18</sup> 15 U.S.C. 78s(b)(1).