

withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act,<sup>3</sup> and shall not affect its obligation to be registered under section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before January 4, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### *Electronic Comments*

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1-05197 or;

#### *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 1-05197. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50821; File No. SR-CBOE-2004-73]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Restrict a Designated Primary Market-Maker's Ability To Charge a Brokerage Commission

December 8, 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 November 12, 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, 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 Exchange proposes to amend its rules relating to a designated primary market-maker's ("DPMs") ability to charge a brokerage commission. Proposed new language is in italics.

\* \* \* \* \*

#### Rule 8.85. DPM Obligations

- (a) Dealer Transactions. No Change.
- (b) Agency Transactions. No Change.
- (i)-(iii) No Change.
- (iv) not charge any brokerage commission with respect to:

(1) the execution of any *portion of an order* for which the DPM has acted as both agent and principal, unless the customer who placed the order has consented to paying a brokerage commission to the DPM with respect to the DPM's execution of the order while acting as both agent and principal; or

(2) *any portion of an order for which the DPM was not the executing floor broker, including any portion of the order that is automatically executed through an Exchange system; or*

(3) *any portion of an order that is automatically cancelled; or;*

(4) *any portion of an order that is not executed and not cancelled.*

\* \* \* \* \*

## 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange believes that the proposed rule change clarifies within CBOE rules that a DPM cannot charge a brokerage commission on orders for which they do not perform an agency function. The Exchange also believes the proposed rule change is both appropriate and necessary to clarify to the investing public that orders sent to the CBOE will not be subject to excessive or arbitrary costs. In addition to protecting investors, the Exchange believes that this rule change also preserves the competitiveness of the Exchange.

Therefore, the Exchange proposes to amend CBOE rules that govern DPMs to specifically prohibit DPMs from charging a brokerage commission for an order, or the portion of an order, (1) for which the DPM was not the executing broker, which includes any portion of the order that is automatically executed through an Exchange system; (2) that is automatically cancelled; or (3) that is not executed, and not cancelled. The Exchange believes that the prohibition on charging floor brokerage commissions under the aforementioned order scenarios is appropriate simply because the DPM does not handle or perform any agency function for such orders.

Finally, the proposed rule change also proposes to make a technical clarification to current CBOE Rule 8.85(b)(iv), which is related to this filing and which prohibits a DPM from charging a brokerage commission for the portion of any order in which the DPM acts as both principal and agent. This proposal would add the term "portion" to the rule text to clarify that a DPM can charge a brokerage commission for the part of any order that it has not executed as principal, but did act as executing

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

<sup>4</sup> 15 U.S.C. 78j(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

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

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

broker in the execution of that order. The Exchange believes that this is the current practice on the Exchange and in the industry.

## 2. Statutory Basis

The Exchange believes that restricting a DPM from unnecessarily charging brokerage commission for agency orders will benefit both investors and will preserve the competitiveness of the Exchange. The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>3</sup> in general and furthers the objectives of section 6(b)(5) of the Act<sup>4</sup> in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

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

The Exchange believes that the proposed rule change does not 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*

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 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-2004-73 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-2004-73. 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-2004-73 and should be submitted on or before January 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50819; File No. SR-ISE-2003-06]

### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 Thereto by the International Securities Exchange, Inc. To Establish Rules Implementing a Price Improvement Mechanism**

December 8, 2004.

## I. Introduction

On February 25, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to establish rules implementing a Price Improvement Mechanism ("PIM"). On February 25, 2004, the ISE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on March 3, 2004.<sup>4</sup> The Commission received one comment letter with respect to the proposal and Amendment No. 1.<sup>5</sup> On June 24, 2004, the ISE filed Amendment No. 2 to the proposed rule change,<sup>6</sup> and a written response to the Comment Letter.<sup>7</sup> On October 28, 2004, the ISE

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

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

<sup>3</sup> See Letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 24, 2004 ("Amendment No. 1"). In Amendment No. 1, the ISE replaced the proposed rule text in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 49323 (February 26, 2004), 69 FR 10087 ("Notice").

<sup>5</sup> See Letter from Kenneth R. Leibler, Chairman and Chief Executive Officer, Boston Stock Exchange, Inc. ("BSE") to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 24, 2004 ("Comment Letter"). A discussion of the Comment Letter is provided below in Section IV, Discussion and Commission Findings.

<sup>6</sup> See Letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 23, 2004 ("Amendment No. 2"). As noted below, in Amendment No. 2, the ISE proposes to clarify its rules to address issues raised by the Comment Letter and Commission staff.

<sup>7</sup> See Letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Jonathan G. Katz, Secretary, Commission, dated June 23, 2004 ("Response Letter").

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

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 17 CFR 200.30-3(a)(12).