

**SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49472; File No. SR-CBOE-2003-35)**

March 25, 2004

Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Inc. Relating to Non-Aggregation Treatment of Trading Units of Member Firms for Position and Exercise Limits

On August 26, 2003, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) submitted to the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to issue a regulatory circular containing additional guidance for member firms requesting that one or more of their internal trading units be treated as a separate aggregation units for purposes of determining aggregate position and exercise limits for a particular option contract. On September 29 2003, the CBOE submitted Amendment No. 1 to the proposed rule change. On January 29, 2004, the CBOE submitted Amendment No. 2 to the proposed rule change. On February 9, 2004 the CBOE submitted Amendment No.3 to the proposed rule change. The Federal Register published the proposed rule change, as amended, for comment on February 19, 2004.³ The Commission received no comments on the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 49213 (February 9, 2004), 69 FR 7829.

After careful consideration, 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.⁴ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission believes that the proposed rule change establishes reasonable conditions for the Exchange to determine whether separate trading units within the same member firm may receive non-aggregation treatment with respect to position and exercise limits. The Commission notes that the proposed rule change will require that a CBOE member seeking non-aggregation treatment create internal firewalls and information barriers between trading units that are sufficient to prevent the flow of information (e.g., trades, positions, and trading strategies) between trading units that receive non-aggregation treatment and other trading units controlled by the member. In addition, the Commission believes that the proposed rule change should promote accountability of member firms receiving non-aggregation treatment. Moreover, the Commission believes that the procedures that the Exchange employs to consult with members of

⁴ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

the Intermarket Surveillance Group before granting non-aggregation treatment to a member should promote consistent determinations of whether or not to grant non-aggregation treatment.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-CBOE-2003-35), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland
Deputy Secretary

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).