

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57332; File No. SR-CBOE-2008-08)

February 14, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding CBOE Rules 6.45A and 6.45B

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 February 6, 2008, the Chicago Board Options Exchange, Incorporated (“CBOE” or the “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 substantially 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 regarding the application of participation entitlements to orders executed electronically on the CBOE Hybrid Trading System (“Hybrid system”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/Legal>) at the CBOE’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

CBOE Rules 6.45A and 6.45B govern priority and allocation of trades on the Hybrid system for equity options and index/ETF options, respectively. Paragraph (a) of both rules sets forth the manner in which incoming electronic orders are allocated (the rules are substantially similar). Within paragraph (a) there is a “menu” of matching/priority possibilities that allows for greater customization in creating an allocation structure for option classes trading on the Hybrid system. Essentially, the first step is to select a base matching algorithm. The choices are price-time priority (in which allocations are based on the time of receipt of order/quotes at the best price), pro-rata priority (in which allocations are based on the size of the quotes/orders at the best price), or CBOE’s Ultimate Matching Algorithm (which takes into account the number of participants quoting at the NBBO and the size of those quotes and orders). After a base matching algorithm is selected, the Exchange may utilize optional priority overlays that would be applied on a trade before the matching algorithm was used to allocate an order. The optional priority overlays may be applied in any sequence determined by the appropriate Procedure Committee (subject to certain restrictions set forth in the Rules). The overlays are public customer priority (self-explanatory), market turner priority (in which priority goes to the participant that turned/improved the market to that price point), and a Market-Maker participation entitlement (in which Market-Makers and/or Designated Primary Market-Makers (“DPMs”), e-DPMs, and Lead Market-Makers (“LMMs”) receive special allocations up to certain percentage maximums).

Currently, participation entitlements may be established for Hybrid electronic executions pursuant to different Exchange rules. More specifically, CBOE Rule 8.13 allows for the establishment of a participation entitlement for Preferred Market-Makers (in which an order sender may designate a “preferred” Market-Maker for an order and if that Market-Maker is quoting at the Exchange’s best bid/offer at the time the order is received, it will receive the designated participation entitlement). CBOE Rule 8.87 allows for a designated participation entitlement applicable to the DPM in the class (or the DPM and the e-DPMs combined, if there are e-DPMs in the class), if the DPM is quoting at the Exchange best bid/offer at the time the order is received. CBOE Rule 8.15B is virtually identical to Rule 8.87 except that it applies to LMMs.

This proposed rule change proposes to allow for more than one participation entitlement to be activated for an option class (for purposes of electronic trading on the Hybrid system under Rules 6.45A and 6.45B), including in different priority sequences, provided that no more than one entitlement could be applied on any given trade. Thus, the Exchange could set up an allocation structure that contemplates using both the Preferred Market-Maker entitlement and the DPM or LMM entitlement (DPMs and LMMs cannot be assigned to the same class) with different priority positions. For example, a class could be designated as a pro-rata class with the following priority overlays (in order): (1) public customer; (2) Preferred Market-Maker entitlement; (3) Market Turner; and (4) DPM entitlement. If an order was received by the Hybrid system while this allocation structure was in place, public customer orders would trade first, the Preferred Market-Maker would trade second, the Market Turner would trade third, the DPM (DPM Complex) would trade fourth, if the Preferred Market-Maker was not present at the best price, and any remaining balance would trade using pro-rata.

The Exchange believes that adding this flexibility to its matching rules will allow for greater customization, resulting in enhanced service to its customers and users.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(5) of the Act⁴ in particular, because:

(i) the filing allows the Exchange to further customize the Hybrid matching algorithm in connection with customer preference without increasing the participation entitlement percentages applicable to option trading, which serves to remove impediments to and perfect the mechanism of a free and open market; and (ii) the filing proposes continued use of a purely objective method for allocating option trades which promotes just and equitable principles of trade.

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 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 CBOE consents, the Commission will:

(A) by order approve such proposed rule change; or

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

- (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. Please include File Number SR-CBOE-2008-08 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-08. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00

p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2008-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

Florence E. Harmon
Deputy Secretary

⁵ 17 CFR 200.30-3(a)(12).