

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57367; File No. SR-CBOE-2007-120)

February 21, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Market-Makers and Remote Market-Makers

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 October 11, 2007, 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 substantially prepared by the Exchange. On February 13, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE rules relating to Market-Makers and Remote Market-Makers (“RMMs”). The text of the rule proposal is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment 1 replaced the original filing in its entirety.

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

CBOE proposes to amend CBOE rules relating to Market-Makers and RMMs. In particular, CBOE proposes to: (i) delete reference to RMMs in its rules; (ii) amend CBOE Rule 8.3 and CBOE Rule 8.7 relating to the appointment of Market-Makers and Market-Maker obligations, respectively; and (iii) update or delete outdated provisions in other rules, including CBOE Rule 8.3A relating to Class Quoting Limits (“CQLs”).

CBOE proposes to delete CBOE Rule 8.4 and, as a result, individuals and member organizations that are registered as RMMs would be considered Market-Makers under CBOE’s rules.⁴ RMMs were established in 2005 to allow market participants the ability to stream electronic quotations from a location outside of the physical trading station for an option class. At the time, Market-Makers were restricted from submitting electronic quotations from a location outside of the physical trading station. Over time, CBOE has amended its rules to permit Market-Makers to create a virtual trading crowd appointment and submit electronic

⁴ In connection with this change, CBOE proposes to make related changes to CBOE Rules 3.2, 3.3, 6.45A, 6.45B, 8.7, 8.13, 8.85, and 8.92 which reference the term RMM, and delete Rule 8.61, which pertains to the evaluation of RMMs.

quotations away from CBOE's trading floor in a Market-Maker's appointed classes. While on the trading floor, a Market-Maker is not required to be present in the trading station where a class is located in order to stream electronic quotations into the class.⁵

The obligations of Market-Makers and RMMs are generally the same, and Market-Makers in Hybrid and Hybrid 2.0 option classes can function remotely if they choose. Additionally, the "appointment costs" and transaction fees of RMMs and Market-Makers are identical. Accordingly, CBOE does not see any reason to continue to maintain a category of market participant called RMM.

In connection with the deletion of the reference to RMMs, CBOE proposes to amend the definition of Market-Maker to include member organizations. Currently, an RMM can be either an individual or a member organization. Under CBOE Rule 8.1, however, a Market-Maker is defined as an individual (either a member or a nominee of a member organization) registered with CBOE for the purpose of making transactions as dealer-specialist on CBOE in accordance with the provisions of Chapter VIII. Therefore, CBOE proposes to amend the definition of Market-Maker to include member organizations. CBOE also proposes to amend CBOE Rule 3.3 to clarify that the member organization membership statuses that are approved by the Membership Committee include Market-Maker.⁶

CBOE also proposes to delete Interpretation and Policy .02 to CBOE Rule 3.8, and amend CBOE Rule 3.8(a)(ii) to allow any member organization that is the owner or lessee of more than one membership to designate one individual to be the nominee for all memberships utilized by the organization. However, for each membership utilized for trading in open outcry

⁵ See CBOE Rule 8.3(c)(vi).

⁶ Interpretation .02 of CBOE Rule 3.3 is also proposed to be amended to include reference to Lead Market-Maker.

on the trading floor, the organization must designate a different individual to be the nominee for each of the memberships. Currently, only RMMs, e-DPMs and Off-Floor DPMs are permitted to designate one individual to be the nominee for all memberships utilized by the organization. CBOE believes it is appropriate to allow any member organization to designate one individual to be the nominee for all memberships utilized by the organization, and if any of the memberships are utilized for trading in open outcry on the trading floor, the organization must designate a different individual to be the nominee for each of the memberships.

CBOE also proposes to update and amend CBOE Rule 8.3 pertaining to the appointment of Market-Makers. First, CBOE proposes to amend paragraph (a) of CBOE Rule 8.3 to provide that appointments can be selected by Market-Makers or made by CBOE consistent with the factors set forth in paragraph (a). Second, CBOE proposes to amend paragraph (c)(ii) to delete the requirement that a Market-Maker may hold an appointment in an appropriate number of Hybrid option classes that are located at one trading station. This limitation which requires that appointments in Hybrid option classes must be located at one trading station is not necessary. Moreover, since all option classes are either Hybrid 2.0 option classes or Hybrid 3.0 option classes, it is irrelevant.

Third, CBOE proposes to amend and reorganize paragraph (c)(vii) of CBOE Rule 8.3 pertaining to the two current pilot programs that are in effect, and also to extend for an additional year the pilot programs. Specifically:

- Proposed new subparagraph (1) of CBOE Rule 8.3(c)(vii) describes the existing pilot program which allows an e-DPM or Off-Floor DPM to have one affiliated Market-Maker trade on CBOE's trading floor and submit electronic quotations in any specific option class allocated to the e-DPM or Off-Floor DPM, provided such affiliated

Market-Maker trades on a separate membership and is present in the trading crowd (see CBOE Rules 8.85(a)(v) and 8.93(vii)). As noted above, CBOE also proposes to extend for an additional year, until March 14, 2009, this pilot program, as it believes that the pilot program has been successful, and CBOE has not experienced any negative effects with respect to the pilot program.

- Proposed new subparagraph (2) of CBOE Rule 8.3(c)(vii) maintains the existing pilot program which permits an RMM to have one affiliated Market-Maker trade in open outcry and submit electronic quotations in any specific option class in which the Market-Maker holds an appointment, provided such affiliated Market-Maker trades on a separate membership (see CBOE Rule 8.4(c)(i)). However, because CBOE is deleting reference to RMMs, subparagraph (2) of CBOE Rule 8.3(c)(vii) states that a Market-Maker in a class may have one affiliated Market-Maker trade in open outcry and submit electronic quotations in any specific option class in which the Market-Maker holds an appointment, provided such affiliated Market-Maker trades on a separate membership and is present in the trading crowd. As noted above, CBOE proposes to extend for an additional year, until March 14, 2009, the pilot program, as CBOE believes that it has been successful, and CBOE has not experienced any negative effects with respect to the pilot program.
- Proposed new subparagraph (3) of CBOE Rule 8.3(c)(vii) provides that there is no restriction on (a) affiliated Market-Makers holding an appointment and submitting electronic quotations in the same class, provided CBOE uses an allocation algorithm in the class that does not allocate electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or

offer; or (b) affiliated Market-Makers holding an appointment in the same class for purposes of trading in open outcry.

- Proposed new subparagraph (4) of CBOE Rule 8.3(c)(vii) simply restates the multiple aggregation unit pilot program currently applicable to RMMs (see CBOE Rule 8.4(c)(ii)) and Market-Makers (see CBOE Rule 8.3(c)(viii)). CBOE also proposes to extend for an additional year, until March 14, 2009, the pilot program. CBOE believes that the pilot program has been successful, and CBOE has not experienced any negative effects with respect to the pilot program.

With regard to the obligations of Market-Makers, CBOE proposes to amend CBOE Rule 8.7 to delete references to RMMs and other outdated references to appointed trading stations. Additionally, CBOE proposes to delete reference to DPMs representing orders as agent in CBOE Rule 8.7(d)(i)(C), as DPMs cannot act as an agent for orders (see Rule 8.85(c)).

CBOE also proposes to update CBOE Rule 8.3A pertaining to CQLs. CBOE proposes to amend paragraph (a) to state that the DPM and e-DPMs (if applicable) assigned to a product and Market-Makers who hold an appointment in the product are entitled to quote electronically in the product for as long as they maintain an appointment in the product. CBOE proposes to amend paragraphs (b) and (c) to delete reference to March 18, 2005, and also to provide that any Market-Maker holding an appointment in a product prior to its addition to the Hybrid 2.0 Platform or Hybrid Trading System, respectively, will be entitled to quote electronically in the product. Finally, CBOE proposes to delete existing Interpretation .02, as it is outdated.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the

requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act⁸ that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest

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

The Exchange 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

The Exchange neither solicited nor received comments on the proposal.

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

⁷ 15 U.S.C. 78f(b).

⁸ 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-2007-120 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-2007-120. 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 the 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-2007-120 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).