

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58196; File No. SR-CBOE-2008-76)

July 18, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend Two Pilot Programs Related to the Exchange's Automated Improvement Mechanism Until July 18, 2009

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 July 17, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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

CBOE proposes to extend two pilot programs related to the Exchange's Automated Improvement Mechanism ("AIM") for one year, until July 18, 2009. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

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

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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

In February, 2006, CBOE obtained approval of a filing adopting the AIM auction process.<sup>5</sup> AIM exposes certain orders electronically to an auction process to provide such orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that an Exchange member represents as agent and for which a second order of the same size as the “Agency Order” (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

Two components of AIM were approved on a pilot basis: (1) that there is no minimum size requirement for orders to be eligible for the auction, and (2) that the auction will conclude prematurely anytime there is a quote lock on the Exchange pursuant to Rule 6.45A(d).<sup>6</sup> In connection with the pilot programs, the Exchange has submitted to the Commission reports providing detailed AIM auction and order execution data. In July 2006, the Exchange extended

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<sup>5</sup> See Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR-CBOE-2005-60).

<sup>6</sup> That rule relates to situations where a Market-Maker’s quote interacts with the quote of another CBOE Market-Maker (i.e. when internal quotes lock).

the pilot program until July 18, 2007.<sup>7</sup> In July 2007, the Exchange extended the pilot program until July 18, 2008.<sup>8</sup> The proposed rule change merely extends the duration of the pilot programs until July 18, 2009. Extending the pilots for an additional year will allow the Commission more time to consider the impact of the pilot programs on AIM order executions. To further aid the Commission in its evaluation of the pilot program, CBOE represents that it will provide the following additional information each month:

(1) For the first Wednesday of each month: (a) the total number of AIM auctions on that date; (b) the number of AIM auctions where the order submitted to the AIM was fewer than 50 contracts; (c) the number of AIM auctions where the order submitted to the AIM was 50 contracts or greater; (d) the number of AIM auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the Initiating Member), 1 participant (excluding the Initiating Member), 2 participants (excluding the Initiating Member), 3 participants (excluding the Initiating Member), 4 participants (excluding the Initiating Member), etc., and (e) the number of AIM auctions (for orders of 50 contracts or greater) with 0 participants (excluding the Initiating Member), 1 participant (excluding the Initiating Member), 2 participants (excluding the Initiating Member), 3 participants (excluding the Initiating Member), 4 participants (excluding the Initiating Member), etc.

(2) For the third Wednesday of each month: (a) the total number of AIM auctions on that date; (b) the number of AIM auctions where the order submitted to the AIM was fewer than 50 contracts; (c) the number of AIM auctions where the order submitted to the AIM was 50 contracts or greater; (d) the number of AIM auctions (for orders of fewer

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<sup>7</sup> See Securities Exchange Act Release No. 54147 (July 14, 2006), 71 FR 41487 (July 21, 2006) (SR-CBOE-2006-64).

<sup>8</sup> See Securities Exchange Act Release No. 56094 (July 18, 2007), 72 FR 40910 (July 25, 2007) (SR-CBOE-2007-80)

than 50 contracts) with 0 participants (excluding the Initiating Member), 1 participant (excluding the Initiating Member), 2 participants (excluding the Initiating Member), 3 participants (excluding the Initiating Member), 4 participants (excluding the Initiating Member), etc., and (e) the number of AIM auctions (for orders of 50 contracts or greater) with 0 participants (excluding the Initiating Member), 1 participant (excluding the Initiating Member), 2 participants (excluding the Initiating Member), 3 participants (excluding the Initiating Member), 4 participants (excluding the Initiating Member), etc.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>10</sup> in particular in that by allowing the Commission additional time to evaluate the AIM pilot programs, it should serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

### 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

The Exchange neither solicited nor received comments on the proposal.

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

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

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78(f)(b)(5).

competition; and (3) by its terms does not become operative for 30 days after the date of this 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)<sup>11</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-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 Exchange requests that the Commission waive the 30-day operative delay, which would make the rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the AIM pilot programs to continue without interruption.<sup>13</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.<sup>14</sup>

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.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> Rule 19b-4(f)(6)(iii) requires the Exchange to provide the Commission with written notice of its intention to file the proposed rule change along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission, or such shorter time as designated by the Commission. The Commission has determined to waive the five business day period in this case.

#### 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-2008-76 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-CBOE-2008-76. 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 am and 3:00 pm. 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-2008-76 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.<sup>15</sup>

Florence E. Harmon  
Acting Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).