SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58307; File No. SR-CBOE-2008-79)

August 5, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Automated Improvement Mechanism

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 July 30, 2008, 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 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[3] and Rule 19b-4(f)(6) thereunder,[4] which renders it 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

The Exchange proposes to modify its Automated Improvement Mechanism ("AIM") in order to (i) give the Exchange the flexibility to lower the applicable crossing entitlement percentage on a class-by-class basis, and (ii) clarify that AIM can be made available in Hybrid 3.0 classes. The text of the proposed rule change is available on the Exchange's website (www.cboe.org/Legal), at the Exchange's Office of the Secretary and at the Commission.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A).

4 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the AIM auction process, a member that represents agency orders may submit an order it represents as agent ("Agency Order") along with a second order (a principal order or a solicited order for the same amount as the Agency Order) into the AIM auction where other participants could compete with the submitting member's second order to execute against the Agency Order. The Exchange is proposing to modify the AIM rule in order to provide the Exchange with the ability to determine the applicable crossing entitlement percentage afforded to the members initiating AIM executions ("Initiating Members"). Currently the crossing entitlement percentage is fixed at the following:

- If the best price equals the Initiating Member's single-price submission, the Initiating Member's single-price submission shall be allocated the greater of one contract or 40% of the order. However, if only one Market-Maker matches the Initiating Member's single price submission then the Initiating Member shall be allocated 50% of the order.
- If the Initiating Member selected the auto-match option of AIM, the Initiating Member shall be allocated its full size at each price point until a price point is reached where the

balance of the order can be fully executed. At such price point, the Initiating Member shall be allocated the greater of one contract or 40% of the remainder of the order.

Under the proposed rule change, the Exchange may determine the applicable crossing entitlement percentage on a class-by-class basis, provided that the percentage cannot exceed 40% (or, in a scenario involving a single price submission and only one other Market-Maker matching that price, 50%). This change would therefore allow the Exchange to set a lower crossing entitlement percentage than what is currently permitted under the rule. Any such changes to the entitlement percentage for a given class would be announced by circular.

The Exchange believes that the ability to set a lower entitlement percentage for AIM does not present any new, unique or substantive issues because various other rules already permit the Exchange to modify the applicable crossing entitlement percentage on a class-by-class basis. For example, paragraph (d) of Rule 6.74, Crossing Orders, permits the applicable crossing entitlement percentage for crossing orders in open outcry to be established on a class-by-class basis.

In addition, the Exchange wants to take this opportunity to clarify that the Exchange can determine to make AIM available in Hybrid 3.0 classes. Currently, the rule provides that an AIM auction can be initiated in classes designated by the Exchange as eligible. This could include, for example, classes trading on the Exchange's Hybrid Trading System and Hybrid 3.0 Platform.[5] The rule also provides that there must be at least three Market-Makers quoting in the

5 The "Hybrid Trading System" refers to the Exchange's trading platform that allows individual Market-Makers to submit electronic quotes in their appointed classes. The "Hybrid 3.0 Platform" is an electronic trading platform on the Hybrid Trading System that allows a single quoter to submit an electronic quote which represents the aggregate Market-Maker quoting interest in a series for the trading crowd. Members of the trading crowd may also verbalize quotes ("manual quotes") to be input into the Exchange's systems by quote reporters for dissemination in classes trading on the Hybrid 3.0

relevant series for an AIM auction to begin (the "three quoter requirement").[6] In Hybrid 3.0 classes, since only a single quoter may submit an electronic quote (whether submitted electronically or as manual quote) that is disseminated on behalf of the Market-Maker quoting interest in the trading crowd, the Exchange is herein clarifying that the three quoter requirement is satisfied as long as there are at least three Market-Makers present in the trading crowd for the particular class on behalf of whom the single quoter is representing the electronic quote. No changes to the rule text are proposed in connection with this clarification.

The Exchange believes it is reasonable to clarify that AIM can be made available in Hybrid 3.0 classes. Making AIM available in such classes would provide additional flexibility for members to obtain executions on behalf of their customers while continuing to provide a meaningful, competitive auction. In this regard, the Exchange notes that while there may be only a single quoter submitting electronic quotes for dissemination in Hybrid 3.0 classes, responses may be submitted by all Market-Makers with an appointment in the relevant option class and Members on behalf of orders resting at the top of the Exchange's book opposite the agency order being auctioned.[7] In Hybrid 3.0 classes, which currently include options on the Standard and Poor's 500 Index (SPX), American-style options on the Standard and Poor's 100 Index (OEX) and options on the Morgan Stanley Retail Index (MVR), there are many Market-Makers at any given time that are eligible and connected to participate in AIM.

Platform. Additionally, bids and offers may be made at the trading crowd post by public outcry in any option class trading on either the Hybrid Trading System or Hybrid 3.0 Platform. See Rules 1.1(aaa) and 6.43.

6 The Exchange notes that it is proposing to eliminate the requirement that there be at least three (3) Market-Makers quoting in the relevant series through a separate rule filing, SR-CBOE-2008-42.

7 See Rule 6.74A(b)(1)(D) – (E).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) of the Act[9] in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. In particular, the proposed rule change will provide the Exchange with more flexibility to set a lower crossing entitlement percentage that what is currently permitted in the rule, which will allow us to determine the appropriate percentage for a given class based on competitive and other market considerations. With respect to Hybrid 3.0, the proposed rule change will also clarify that AIM can be made available in such classes and thus provide additional opportunities for price improvement.

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 rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30

8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(5).

days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b-4(f)(6) thereunder.[11] 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.

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-2008-79 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.

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10 15 U.S.C. 78s(b)(3)(A).

11 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-CBOE-2008-79. 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 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-2008-79 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.[12]

Florence E. Harmon
Acting Secretary

[12] 17 CFR 200.30-3(a)(12).