

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57498; File No. SR-CBOE-2008-27)

March 14, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify Its Description of an Existing Program under Which It Makes Subsidy Payments to CBOE Members That Provide Certain Order Routing Functionalities to Other CBOE Members and/or Use Such Functionalities Themselves

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 March 6, 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 and II below, which Items have been substantially prepared by CBOE. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, 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 parties.

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

CBOE proposes to clarify subsidy arrangements with CBOE members that provide certain order routing functionalities to other CBOE members and/or use such functionalities themselves. This rule change does not provide for any modifications to the text of CBOE’s

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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)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

rules. 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.

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

In its filing with the Commission, CBOE 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. CBOE 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, Proposed Rule Change

1. Purpose

CBOE proposes to clarify the description in SR-CBOE-2007-34 of a program under which CBOE enters into subsidy arrangements with CBOE members that provide certain order routing functionalities to other CBOE members and/or use such functionalities themselves.<sup>5</sup> Under the program, CBOE makes payments to participating CBOE members to subsidize their costs of providing routing services to route orders to CBOE. CBOE believes that clarifying its description of the program is desirable in view of questions that it has received about the program since SR-CBOE-2007-34 became effective. This rule change does not make any substantive modification to the program.<sup>6</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 55629 (April 13, 2007), 72 FR 19992 (April 20, 2007) (SR-CBOE-2007-34).

<sup>6</sup> CBOE has administered the program consistent with the description of the program as clarified in this rule change since the inception of the program.

SR-CBOE-2007-34 includes a description of the features that an order routing functionality must have to qualify for the program. One required feature is a preferencing feature such that CBOE is the default destination exchange for individually executed marketable orders if CBOE is at the national best bid or offer (“NBBO”), regardless of size or time, subject to the ability of any user to manually override CBOE as the default destination on an order-by-order basis.

SR-CBOE-2007-34 stated that CBOE’s payment to participating CBOE members to subsidize their costs of providing routing services “would be \$0.05 per contract for orders routed to CBOE through a participating member’s system.” Questions that CBOE has received have shown that this statement should be clarified in two respects. First, CBOE makes payments under the program only with respect to executed contracts routed to CBOE through a participating member’s system; no payment is made with respect to orders that are routed to CBOE but not executed. Second, CBOE does not make payments under the program with respect to executed contracts in single-listed options classes traded on CBOE, or with respect to complex orders or spread orders. Single-listed options classes and complex orders or spread orders are not subject to preferencing to a default destination exchange, and CBOE therefore does not take them into account in calculating subsidy payments.<sup>7</sup>

SR-CBOE-2007-34 also stated that a “participating member would have to agree that it would not be entitled to receive any other revenue for the use of its system specifically with respect to orders routed to CBOE.” Questions that CBOE has received have shown that this statement also should be clarified. CBOE never intended that members participating in the

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<sup>7</sup> Quotations are not disseminated through the Options Price Reporting Authority for complex orders or spread orders, and there is no NBBO for such orders.

program would be precluded from receiving payment for order flow if they choose to do so.

CBOE stated in SR-CBOE-2007-34: that nothing about the subsidy program would relieve any CBOE member that is using an order routing functionality provided by another member or its own functionality from complying with its best execution obligations; that, just as with any customer order and any other routing functionality, a member has an obligation to consider the availability of price improvement at various markets and whether routing a customer order through a functionality that qualifies for the program would allow for access to such opportunities if readily available; and that a member needs to conduct best execution evaluations on a regular basis, at a minimum quarterly, that include its use of any router qualifying for the program. These statements all remain true with respect to the program.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Section 6(b) of the Act<sup>8</sup> because it will assist members in understanding the terms of CBOE's order router subsidy program. Specifically, the Exchange believes the proposed rule change is consistent with the objectives of Section 6(b)(4) of the Act<sup>9</sup> in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

### 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 that is not necessary or appropriate in furtherance of purposes of the Act.

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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 constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>10</sup> and Rule 19b-4(f)(1) thereunder.<sup>11</sup> At any time within 60 days of the filing of the 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-27 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.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

All submissions should refer to File Number SR-CBOE-2008-27. 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-2008-27 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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