

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57816; File No. SR-CBOE-2008-41)

May 14, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Automated Improvement Auction

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 April 15, 2008, 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. 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 allow orders for less than 50 contracts to be entered into the Automated Improvement Mechanism (“AIM”) at a price that matches the national best bid or offer (“NBBO”). The text of the proposed rule change is available at the Exchange, on the Exchange’s Web site (<http://www.cboe.org/Legal>), and in 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

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

<sup>2</sup> 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

In order to provide additional opportunities for price improvement, the Exchange proposes to expand the application of its electronic AIM auction process. 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 can compete with the submitting member's second order to execute against the Agency Order. A member (the "Initiating Member") may initiate the AIM auction process provided certain requirements are met. These requirements include a condition that the Initiating Member stop the entire Agency Order as principal or with a solicited order at the following price: (i) if the Agency Order is for 50 contracts or more, at the better of the NBBO or the Agency Order's limit price (if the order is a limit order); and (ii) if the Agency Order is for less than 50 contracts, at the better of (A) the NBBO price improved by one minimum price improvement increment, which increment shall be determined by the Exchange but may not be smaller than one cent; or (B) the Agency Order's limit price (if the order is a limit order).

The Exchange is now proposing to modify this condition with respect to the stop price for orders of less than 50 contracts. Under the proposed rule change, such orders would be stopped at the better of the NBBO or the Agency Order's limit price (if the order is a limit order). Thus, orders for less than 50 contracts would be treated the same as orders for 50 contracts or more for purposes of the AIM stop price requirement. The Exchange believes this is a reasonable

modification designed to provide additional flexibility for members to obtain executions on behalf of their customers while continuing to provide a meaningful, competitive auction. The Exchange believes this expansion of AIM would have the added benefit of providing members with an alternative method of achieving an execution at the NBBO for their customers without having to pay taker fees that may be associated with routing an order to another market in those scenarios where CBOE's best bid or offer is inferior to the NBBO.<sup>3</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> 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

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<sup>3</sup> Several options exchanges have adopted a fee structure in which firms receive a rebate for the execution of orders resting in the limit order book (*i.e.*, posting liquidity) and pay a fee for the execution of orders that trade against liquidity resting on the limit order book (*i.e.*, taking liquidity). Taker fees currently range up to \$0.45 per contract and are charged without consideration of the order origin category, including public customer orders. In contrast, CBOE does not generally charge a fee for the execution of public customer orders. The effective price paid by a customer purchasing an option can be considerably higher on an exchange that charges a taker fee. For example, a customer that enters a marketable limit order to buy 10 contracts for \$0.10 would pay \$100 on CBOE and \$104.50 if executed on an exchange that charges a \$0.45 taker fee (an effective 4.5% increase). Because orders cannot be executed at prices inferior to the NBBO, members are effectively forced to pay taker fees when an exchange with a taker fee structure is at the NBBO and the members' orders are directly routed to such an exchange or indirectly routed to such an exchange through the Intermarket Options Linkage (where the fees are passed through).

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

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

Exchange believes that the proposed rule change will provide additional opportunities for price improvement and guaranteed executions at a price at least as good as the NBBO. Additionally, it will allow members to avoid paying taker fees.

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 the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-41 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2008-41. 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 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 office of the 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-2008-41 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>6</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).