

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57747; File No. SR-CBOE-2008-49)

April 30, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Off-Floor LMMs

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 24, 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, II, and III below, which Items have been substantially 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> 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 amend CBOE rules relating to Lead Market-Makers (“LMMs”). The text of the proposed rule change is available on the Exchange’s Web site ([www.cboe.org/Legal](http://www.cboe.org/Legal)), at the Exchange’s Office of the Secretary and at the Commission.

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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 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 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

Last year, CBOE amended its rules to provide Designated Primary Market-Makers (“DPMs”) with the flexibility to operate remotely away from CBOE’s trading floor as a so-called “Off-Floor DPM.”<sup>5</sup> CBOE is now proposing to provide LMMs with the same flexibility to operate remotely away from CBOE’s trading floor. Specifically, CBOE proposes to amend Rule 8.15A, Lead Market-Makers in Hybrid Classes, to provide the following:

- An LMM generally will operate on CBOE’s trading floor (“On-Floor LMM”).

However, an LMM can request that the Exchange authorize the LMM to function remotely away from CBOE’s trading floor (“Off-Floor LMM”) on a class-by-class basis.

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<sup>5</sup> See Securities Exchange Act Release No. 55531 (March 26, 2007), 72 FR 15736 (April 2, 2007) (SR-CBOE-2006-94). See also Securities Exchange Act Release No. 57568 (March 26, 2008), 73 FR 18016 (April 2, 2008) (SR-CBOE-2008-32) (immediately effective rule change expanding the Off-Floor DPM program, which had originally been limited to equity option classes to include all option classes traded on the Hybrid Trading System and Hybrid 2.0 Platform (collectively “Hybrid”)).

- An LMM can request that the Exchange authorize it to operate as an Off-Floor LMM in one or more Hybrid classes. The Exchange will consider the factors specified in Rule 8.15A(a)(i)(A),<sup>6</sup> as well as the factors applicable to Off-Floor DPMs specified in paragraph (g) of Rule 8.83, Approval to Act as a DPM,<sup>7</sup> in determining whether to permit an LMM to operate as an Off-Floor LMM. If an LMM is approved to operate as an Off-Floor LMM in one or more Hybrid classes, the Off-Floor LMM can have an LMM designee trade in open outcry in the option classes allocated to the Off-Floor LMM, but the Off-Floor LMM shall not receive a participation entitlement under

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<sup>6</sup> CBOE Rule 8.15A(a)(i) provides that the factors to be considered in selecting LMMs include: adequacy of capital; experience in trading index options or options on ETFs; presence in the trading crowd; adherence to CBOE Rules; and ability to meet the obligations specified in the Rule. An individual may be appointed as an LMM for one expiration month at a time. When individual members are associated with one or more other members, only one member may receive an LMM appointment.

<sup>7</sup> CBOE Rule 8.83(g) provides that the factors to be consider in determining whether to permit a DPM to operate as an Off-Floor DPM include, but are not limited to, any one or more of the following: (i) adequacy of capital; (ii) operational capacity; (iii) trading experience of and observance of generally accepted standards of conduct by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM; (iv) number and experience of support personnel of the applicant who will be performing functions related to the applicant's DPM business; (v) regulatory history of and history of adherence to CBOE Rules by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM; (vi) willingness and ability of the applicant to promote the Exchange as a marketplace; (vii) performance evaluations conducted pursuant to CBOE Rule 8.60, Evaluation of Trading Crowd Performance; and (viii) in the event that one or more shareholders, directors, officers, partners, managers, members, DPM Designees, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, DPM Designee, or other principal in another DPM, adherence by such DPM to the requirements set forth in Section C of Chapter VIII of the CBOE Rules respecting DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the DPM.

Rule 8.15B, Participation Entitlement of LMMs, with respect to orders represented in open outcry.<sup>8</sup>

- An LMM that is approved to operate as an Off-Floor LMM in one or more Hybrid classes can request that the Exchange authorize it to operate as an On-Floor LMM in those option classes. In making a determination pursuant to this paragraph, the Exchange should evaluate whether the change is in the best interests of the Exchange, and may consider any information that it believes will be of assistance to it. Factors to be considered may include, but are not limited to, performance, operational capacity of the Exchange or LMM, efficiency, number and experience of personnel of the LMM who will be performing functions related to the trading of the applicable securities, number of securities involved, number of Market-Makers affected, and trading volume of the securities.<sup>9</sup>
- In addition, CBOE is proposing to include a requirement that, as part of a pilot program until March 14, 2009, an Off-Floor LMM not allow more than one Market-Maker affiliated with the Off-Floor LMM to trade on CBOE's trading floor in any specific option class allocated to the Off-Floor LMM and provided such Market-Maker is trading on a separate membership (absent the pilot program, an Off-Floor LMM may not allow any Market-Makers affiliated with the Off-Floor LMM to trade on CBOE's trading floor in any class allocated to the Off-Floor LMM) and provided

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<sup>8</sup> In addition to the changes to CBOE Rule 8.15A, CBOE is proposing related updates to paragraph (b) of CBOE Rule 8.15B, Participation Entitlement of LMMs, and subparagraphs (d)(v) and (vii) of CBOE Rule 6.74, Crossing Orders.

<sup>9</sup> These proposed On-/Off-Floor LMM provisions are substantially similar to the corresponding provisions for On-/Off-Floor DPMs in paragraphs (g) and .01 to CBOE Rule 8.83.

the Off-Floor LMM does not have an LMM designee trading in open outcry in the option classes allocated to the Off-Floor LMM.<sup>10</sup>

Lastly, CBOE is proposing to update the LMM obligations listed in Rule 8.15A to include a requirement that, subject to paragraph (d) of Rule 54.7, General Prohibitions (under the CBOE Stock Exchange Rules), LMMs in Hybrid classes (whether On-Floor or Off-Floor) maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information with any affiliates that may conduct a brokerage business in option classes allocated to the LMM or act as specialist or Market-Maker in any security underlying options allocated to the LMM, and otherwise comply with the requirements of Rule 4.18, Prevention of the Misuse of Material, Non-Public Information.<sup>11</sup>

By permitting an LMM to function as an Off-Floor LMM, CBOE believes that the rule change provides more flexibility to a member organization that may wish to function remotely, and provides more flexibility to CBOE when allocating option classes to the best applicant. It also removes a potential operational dilemma for a Market-Maker that functions as a DPM in some classes and an LMM in others, but that would like to function remotely away from the trading floor as a DPM/LMM in all of its option classes. Accordingly, CBOE believes that the proposed rule change is designed to promote just and equitable principles of trade.

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<sup>10</sup> This provision is substantially similar to an existing provision in CBOE's rules respecting Off-Floor DPM obligations. See paragraph (a)(v) of CBOE Rule 8.85, DPM Obligations. CBOE is proposing a related cross-reference update to paragraph (c)(vii)(1) of CBOE Rule 8.3.

<sup>11</sup> This language is substantially similar to existing language in CBOE's rules respecting e-DPM obligations. See paragraph (x) of CBOE Rule 8.93, e-DPM Obligations. In addition, the Exchange is proposing to modify CBOE Rule 8.15A to make clear that the rule applies to Hybrid Trading System and Hybrid 2.0 Platform option classes.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act<sup>13</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to 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 that is 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 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,<sup>14</sup> the proposed

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> CBOE fulfilled this requirement.

rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</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.

#### 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-2008-49 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-2008-49. 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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<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 am and 3:00 pm. 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-2008-49 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>17</sup>

Florence E. Harmon  
Deputy Secretary

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