

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57558; File No. SR-CBOE-2008-08)

March 26, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Regarding CBOE Rules 6.45A and 6.45B

On February 6, 2008, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CBOE Rules 6.45A and 6.45B regarding the application of participation entitlements to orders executed electronically on the CBOE Hybrid Trading System (“Hybrid system”). The proposed rule change was published for comment in the Federal Register on February 21, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

CBOE Rules 6.45A and 6.45B govern priority and allocation of trades on the Hybrid system for equity options and index/ETF options, respectively. Paragraph (a) of both rules set forth the manner in which incoming electronic orders are allocated (the rules are substantially the same). First, the appropriate Procedure Committee selects a base matching algorithm (price-time priority, pro-rata priority, or CBOE’s Ultimate Matching Algorithm). If price-time or pro-rata priority matching algorithms are selected, additional optional priority overlays may be applied on a trade before the matching algorithm is used to allocate the order. These additional optional

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57332 (February 14, 2008), 73 FR 9610.

priority overlays are public customer priority, market-turner priority, and a Market-Maker participation entitlement.⁴

Currently, participation entitlements may be established for Hybrid electronic executions pursuant to different Exchange rules. Specifically, CBOE Rule 8.13 allows for the establishment of a participation entitlement for a Preferred Market-Maker, if that Market-Maker is quoting at the Exchange's best bid/offer at the time the order is received. CBOE Rule 8.87 allows for a designated participation entitlement applicable to the DPM in the class (or the DPM and the e-DPMs combined, if there are e-DPMs in the class), if the DPM is quoting at the Exchange best bid/offer at the time the order is received. CBOE Rule 8.15B is virtually identical to Rule 8.87 except that it applies to LMMs. In each case, the Market-Maker must be quoting at the best bid/offer on the Exchange (the "Exchanges BBO") in order to receive a participation entitlement.

This proposed rule change will allow for more than one participation entitlement to be activated for an option class (for purposes of electronic trading on the Hybrid system under Rules 6.45A and 6.45B), including in different priority sequences, provided that no more than one entitlement could be applied on any given trade. Thus, the Exchange could set up an allocation structure for a given option class that contemplates using both the Preferred Market-Maker entitlement and the DPM or LMM entitlement (DPMs and LMMs cannot be assigned to the same class) with different priority positions. Since participation entitlements are only awarded when a Market-Maker is quoting at the Exchange's BBO, if the first designated Market-Maker is not quoting at the Exchange's BBO, the proposed rule change will allow for another

⁴ The appropriate Procedure Committee determines, on a class-by-class basis, whether one or more such optional priority overlays may be applied and the sequence in which they are applied.

designated Market-Maker later in the sequence to receive a participation entitlement as long as it is quoting at the Exchange's BBO.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Although this change will allow for more than one participation entitlement to be activated for a class, it will not increase the participation entitlement percentage applicable to any individual transaction above the existing level, because only one entitlement will be applied on any given transaction. The Commission therefore believes that the proposal is consistent with the Act.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CBOE-2008-08) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).