

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57629; File No. SR-CBOE-2008-02)

April 7, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Replace References to Certain Committees with a Reference to the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 17, 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 substantially by the CBOE. On April 7, 2008, CBOE submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to amend its rules to replace references to certain committees with a reference to the “Exchange.” The text of the proposed rule change is available at the CBOE, the Commission’s Public Reference Room, and [www.cboe.com](http://www.cboe.com).

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 in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of

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

<sup>2</sup> 17 CFR 240.19b-4.

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

The Exchange proposes to amend CBOE Rules to delete certain references to the appropriate Procedure, Floor Officials, appropriate Market Performance, Membership, and Product Development Committees, as well as certain general references to committees such as the “appropriate Exchange committee.” These references are being replaced with a reference to the “Exchange.”

The Exchange is proposing to make these changes in order to simplify and standardize its delegations of authority with respect to these Exchange committees. Under CBOE's organizational structure, Exchange committees can derive their authority in one of two ways. In addition to any powers and duties specifically granted in CBOE's Constitution or Rules, each committee has such other powers and duties as may be delegated to it by the Board of Directors (“Board”).<sup>3</sup> Thus, in some instances CBOE's Constitution or Rules specifically reference a particular committee or “appropriate Exchange committee.” In other instances, the Board separately delegates a particular authority to a committee. Because the authority exercised by committees may be delegated by the Board, the Exchange believes that referencing these committees in the rule text is not necessary. Instead, the Exchange believes a better approach than making a specific reference to the above-listed committees or a general reference to the “appropriate Exchange committee” in the rule text is to simply reference the “Exchange.” In this way, the Exchange will have the flexibility to determine who will perform which authorities under the rules, which might include Exchange officials or the Board determining to delegate

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<sup>3</sup> See Rule 2.1(d).

certain authorities to an appropriate Exchange committee.<sup>4</sup> In addition, excluding these committee references and referencing the “Exchange” will be more efficient from an administrative perspective because the Exchange will not have to make a rule change merely, for instance, to accommodate a change in the title of a committee or to accommodate the reassignment of an authority to another committee.<sup>5</sup>

In addition, as discussed below, various amendments that accommodate the above-described changes and simplify the rule text are also being made. First, though specific references to the Floor Officials Committee are being removed, specific references to Floor Official duties and authorities under the rules will remain. As a result, the Exchange is proposing to define the term “Floor Official” to mean an individual appointed by the Exchange

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<sup>4</sup> As indicated above, Exchange committees only have authorities to the extent specifically granted in CBOE’s Constitution or Rules or by Board delegation. The Board may also exercise authorities of the “Exchange” under CBOE’s Constitution and Rules. In addition, authorities of the “Exchange” may be performed by other Exchange officials. For example, the Exchange’s Chief Executive Officer, President or other officials or designees may have authorities of the “Exchange” as long as it is not inconsistent with CBOE’s Constitution or Rules or any Board directive.

<sup>5</sup> See, e.g., Securities Exchange Act Release Nos. 53537 (March 21, 2006), 71 FR 15778 (March 29, 2006) (SR-CBOE-2006-15) (deleting from the CBOE Rules any specific references to the Clearing Procedures Committee, Exemption Committee, Modified Trading System Appointments Committee, appropriate Screen-Based Trading Committee, appropriate SBT DPM Appointments Committee, and Special Product Assignment Committee because the Exchange determined to eliminate these committees and reassign their respective authorities to other committees and/or to Exchange staff) and 39479 (December 22, 1997), 62 FR 68326 (December 31, 1997) (SR-CBOE-97-61) (deleting from the CBOE Rules any specific references to, and adding ‘appropriate’ to all references that related to, a particular Floor Procedure Committee or Market Performance Committee to accommodate the creation of two new committees, the Index Floor Procedure Committee and the Index Market Performance Committee, which among other things replaced the OEX Floor Procedure Committee and the OEX Market Performance Committee, respectively).

who is granted certain duties and authorities under the CBOE Rules with respect to trading issues and market actions.<sup>6</sup>

Second, Rule 3.31, Delegation of Authority, will be deleted. This rule had indicated that (i) the authority granted to the Exchange under Chapter III, Membership, may be exercised by the Membership Committee and/or the Membership Department and (ii) the Membership Committee may delegate to the Membership Department any of the authority granted to the Membership Committee under the CBOE Rules. Instead of specifying these particular delegations in the rules, the Exchange will have the flexibility to delegate the applicable authorities to a designee(s).<sup>7</sup>

Third, the procedures contained in Rule 6.3, Trading Halts, currently indicate in part that any trading halt that lasts more than two consecutive business days shall be reviewed at the next regularly scheduled meeting of the Floor Officials Committee. Because the Floor Officials Committee will no longer be specifically referenced in the CBOE Rules, the proposed revisions to Rule 6.3 indicate that any trading halt that lasts more than two consecutive days will be reviewed on a regular basis by the Exchange. The revised language will provide the flexibility to establish an appropriate schedule for conducting such reviews that takes into account the Exchange designee that is delegated that responsibility (e.g., a committee that might have regularly scheduled meetings or Exchange staff that might that might conduct such reviews on a regular schedule).

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<sup>6</sup> See proposed Rule 1.1(eee). The Exchange is proposing similar changes to the definition of a “Trading Official” under its Screen-Based Trading System Rules. See proposed changes to Rule 40.1(g).

<sup>7</sup> It is CBOE’s intent that any Exchange designee would be a person or persons that CBOE views as qualified to perform the particular authority granted under Chapter III.

Fourth, Rules 6.45A, Priority and Allocation of Equity Option Trades on the CBOE Hybrid System, and 6.47, Priority on Split-Price Transactions Occurring in Open Outcry, currently contain references to the appropriate Exchange committee having authority to make certain decisions regarding all options classes or products under the committee's jurisdiction.<sup>8</sup> Under the proposed revisions, such decisions will now be made by the Exchange (through a designee delegated the applicable authority) on a class/product basis.<sup>9</sup>

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<sup>8</sup> See paragraphs (a)(i) and (c) of Rule 6.45A (which currently indicates in part that the “final weighting formula for equity options . . . shall be determined by the appropriate Procedure Committee and apply uniformly across all options under its jurisdiction . . .”, that the “appropriate Procedure Committee shall determine which of the preceding two entitlement formulas will be in effect for all classes under its jurisdiction”, and that the “appropriate Procedure Committee will determine the length of the “N-second group” timer provided however that the duration of the “N-second group” timer shall not exceed five seconds [and the] duration of the “N-second group” timer shall apply uniformly across all classes under the Procedure Committee’s jurisdiction”); and paragraph (b) of Rule 6.47 (which currently indicates in part that the “appropriate Exchange committee may increase the ‘minimum qualifying order size’ above 100 contracts for all products under its jurisdiction”).

<sup>9</sup> Rule 6.45A will be revised to indicate that determinations on the final weighting formula, entitlement formula, and N-second group timer will be made on a class basis (also referred to as a product-basis). See proposed changes to paragraphs (a)(i) and (c) of Rule 6.45A and note 8, supra. These changes to Rule 6.45A are consistent with the existing rule language contained in Rule 6.45B, Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System. Rule 6.47 will be revised to indicate that determinations on the minimum qualifying order size will be made on a class basis. See proposed changes to paragraph (b) of Rule 6.47; supra note 8. The Exchange notes that paragraph (b) of Rule 8.60, Evaluation of Trading Crowd Performance, also contains a reference to jurisdiction that is being revised. Rule 8.60 currently indicates in part that the appropriate Market Performance Committee “may find that a Market Participant has failed to satisfy its market responsibilities if it determines from the results of the evaluation that the Market Participant is ranked one or more standard deviations from the mean score of all Market Participants within the Committee’s jurisdiction, or if such a finding may reasonably be supported by any other relevant information known to the Committee.” The reference to “within the Committee’s jurisdiction” will be replaced with “trading the same category of option”. See proposed changes to paragraph (b) of Rule 8.60.

Fifth, the procedures contained in Rules 8.16, RAES Eligibility in Option Classes Other Than Broad-Based Indexes and Options on Exchange Traded Funds on Broad-Based Indexes, and 24.17, RAES Eligibility in Broad-Based Index Options, currently indicate in part that the appropriate Market Performance Committee may exempt from certain percentage requirements with respect to trading,<sup>10</sup> all market maker activity in one or more option classes for certain days, and that data provided to the appropriate committee will not contain the identities of individual market-makers. Under the revised rules, the Exchange (through a designee delegated that authority) may grant the same exemptions. In addition, the revised rule will indicate that, to the extent the data is provided to an Exchange designee consisting of non-Exchange staff, the data will not contain the identities of individual market-makers.

Sixth, the procedures contained in Rule 16.3, Reinstatement, currently indicate in part that the affirmative vote of at least five members of the Membership Committee shall be required to approve an application for reinstatement. Under the revised rule, the Exchange (through a designee delegated that authority) would approve such applications. The requirement of an affirmative vote of at least five members of the Membership Committee will be deleted. The Exchange believes that this level of specificity in the rules is no longer applicable and unnecessary, and notes that at least one other exchange does not have this requirement in its rules.<sup>11</sup>

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<sup>10</sup> See paragraph (a)(iii) of Rule 6.8 and paragraph (b)(vii) of Rule 24.17 for the applicable percentage requirements.

<sup>11</sup> See, e.g., paragraph (a) to International Securities Exchange Rule 1502.

Except as described above, the Exchange notes that it is not making substantive revisions to its underlying processes as a result of this rule change.<sup>12</sup> The rules are simply being revised to provide more flexibility to delegate the applicable authorities, rather than including specific delegations to particular committees in the rules. It is CBOE's intent that any Exchange designee would be a person or persons that CBOE views as qualified to perform the particular authorities.<sup>13</sup>

For example, currently under Rule 3.5, Denial of and Conditions to Membership and Association, the CBOE Membership Committee has the specific authority to deny (or condition) membership or association with a member, and any decision made by the committee may be appealed under Chapter XIX of the CBOE Rules. Under the revised Rule 3.5, the "Exchange" will have the authority to deny (or condition) membership or association with a member. The authority to make such decisions may be delegated to a designee such as Exchange staff or, by a Board delegation, a committee or Exchange staff. Any decision by the designee to deny (or condition) membership or association with another member may be appealed under Chapter

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<sup>12</sup> Various other non-substantive changes are also being proposed to the CBOE Rules. For example, in Rule 2.1, Committees of the Exchange, the heading in paragraph (d) will be changed from "General Duties and Powers of Committees" to "Duties and Powers of Committees" and the sentence, "Each committee shall administer the provisions of the Constitution and the rules of the Exchange pertaining to matters within its jurisdiction[.]" will be deleted. This language is duplicative and unnecessary because paragraph (d) also indicates that, "In addition to any powers and duties specifically granted in the Constitution or Rules, each committee shall have such other powers and duties as may be delegated to it by the Board of Directors." In Interpretation and Policy .06 to Rule 6.8, RAES Operations, a "the" will be replaced with an "a" for consistency. In Interpretation and Policy .01 to Rules 6.75, Discretionary Transactions, and 7.5, Obligations for Fair and Orderly Market, an unnecessary prefatory phrase "[t]he appropriate Procedure Committee has determined that . . ." is being deleted. In Rule 8.60, references to "market-maker" and "floor official" are being capitalized for consistency.

<sup>13</sup> See, e.g., note 7, supra.

XIX, which will continue to apply unchanged.<sup>14</sup> Thus, under the revised Rule 3.5, the procedures will remain the same. The rule is simply being revised to provide the Exchange with the flexibility to assign a designee the authority to deny (or condition) membership or association with a member, rather than referencing a particular committee.<sup>15</sup>

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<sup>14</sup> The Exchange notes that it is not making any revisions to its disciplinary, arbitration or appeals procedures (or related Business Conduct, Arbitration and Appeals Committees) as a result of this rule change. See Chapter XVII, Discipline, XVIII, Arbitration, and XIX, Hearings and Review. Chapter XIX provides the procedure for persons aggrieved by Exchange action (including but not limited to those persons who have been denied membership, barred from being associated with a member, or prohibited or limited with respect to Exchange services, or the services of any Exchange member, taken pursuant to any contractual arrangement, the Constitution or the Rules of the Exchange (other than disciplinary action for which review is provided in Chapter XVII, action of the Arbitration Committee, and any other action that the Rules specify is not subject to appeal under Chapter XXIX) to apply for an opportunity to be heard and the complained of action reviewed. Applications for hearing and review are referred to the Appeals Committee, which appoints a hearing panel to conduct the hearing. The decision of the panel of the Appeals Committee is subject to review by the Board (or a Committee of the Board) and any Director who participated in a matter before it is appealed to the Board shall not participate in any review action by the Board concerning the matter.

<sup>15</sup> See also, e.g.:

- (i) proposed changes to Rule 3.18, Members and Associated Persons Who Are or Become Subject to a Statutory Disqualification (which currently indicates in part that the Chairperson of the Membership Committee appoints a panel composed of the Chairperson and two other members of the Membership Committee to conduct a hearing concerning the matter. The hearing panel then presents its recommended decision to the Membership Committee, who may ratify or amend the decision. The decision is then provided to the subject of the proceeding and CBOE's Executive Committee. The Executive Committee may order review of the decision. Under the proposed revisions, the Exchange (through a designee delegated that authority) will appoint a panel composed of three Exchange members to conduct a hearing concerning the matter. The hearing panel then will present its recommended decision to an Exchange designee, who may ratify or amend the decision (currently the Exchange has determined that this designee would be the Membership Committee per a Board delegation; however, the rule change will give the Exchange the flexibility to change the designee in the future). The decision will then be provided to the subject of the proceeding and the Executive Committee, and the Executive Committee can order review of the decision in the same manner as applies under the Rule today);



## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>16</sup> in general and Section 6(b)(5) of the Act,<sup>17</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. In particular, the Exchange believes that this proposal complies with the Act because the Exchange is amending its rules to eliminate certain committee references to facilitate compliance.

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- (ii) proposed changes to Rule 8.60 (which currently indicates in part that the appropriate Market Performance Committee (or a panel thereof) conducts formal hearings or informal meetings, and actions taken after formal hearings may be reviewed by the Board (or a panel thereof) while actions taken after an informal meeting may be appealed in accordance with Chapter XIX; under the proposed revisions, the Exchange (through a designee delegated that authority) will conduct such hearings and actions taken by the Exchange after a formal hearing may be reviewed by the Board (or a panel thereof) while actions taken by the Exchange after an informal meeting may be appealed in accordance with Chapter XIX); and
  - (iii) proposed changes to Rule 24.21, Index Crowd Space Dispute Resolution Procedures (which currently indicates in part that the Chairman of the appropriate Procedure Committee shall select a Crowd Space Dispute Resolution Panel composed of seven members of the Exchange, two who are members of the Chairman's Procedure Committee, and two that trade in the trading station where the dispute has arisen and two that do not trade in that station (with preference given to members who serve on another Procedure Committee or Market Performance Committee), and the seventh being the Floor Officials Committee Chairman or another Floor Officials Committee member; under the proposed revisions, a designee will be appointed to perform the function of selecting the panel (referred to as the "Space Mediator") and the panel shall consist of seven members of the Exchange, three who trade in the trading station where the dispute has arisen and three that do not trade in that station and one Floor Official designated by the Exchange.)

It is CBOE's intent that any Exchange designee would be a person or persons that CBOE views as qualified to perform the particular authority granted under the rules noted above.

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not 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

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 self-regulatory organization 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, as amended, 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 No. SR-CBOE-2008-02 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-2008-02. 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 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-2008-02 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).