

which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) Set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.

The contract sets specific terms and conditions for providing Express Mail service to the customer. Express Mail is provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with Express Mail service in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.

I am advised that Express Mail service and this contract are not covered by these provisions. See part (d) above.

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.

See part (d) above. Expedited shipping, including guaranteed overnight shipping, is widely available from well-known and successful private firms at both published and contract prices.

(g) Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

(h) Provide a description of the likely impact of the proposed modification on small business concerns.

The market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

(i) Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

Additional details regarding the terms of the contract have been provided to the Commission under seal due to the sensitivity of the contract to both the customer and the Postal Service.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58326; File No. SR-CBOE-2008-82]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules Related to the Hybrid Agency Liaison and the Complex Order RFQ Auction

August 7, 2008.

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 July 31, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been 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.

<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).

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

The Exchange proposes to modify Rule 6.14, *Hybrid Agency Liaison (HAL)*, so that the order eligibility requirements mirror the requirements for the Exchange's Rule 6.13A, *Simple Auction Liaison (SAL)*. The Exchange also proposes a similar modification to Rule 6.53C(d), *Process for Complex Order RFR Auction ("COA")*, so that the Exchange may determine eligible complex order type and eligible complex order origin code for COA on a class-by-class basis. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary and at the Commission.

### 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 self-regulatory organization 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

HAL and COA are features within CBOE's Hybrid System. In classes where HAL and/or COA are activated, eligible orders are electronically exposed for an exposure period. During the applicable exposure period, the orders that are subject to exposure are eligible to receive a better price. At the conclusion of the HAL or COA process, as applicable, the order is then allocated or, to the extent not executed, booked or routed as described in the relevant rules.

HAL exposes eligible simple orders for price improvement. For HAL, an eligible order is currently an order in an option class designated by the Exchange that is (i) a market order or limit order that is marketable against the Exchange's disseminated quotation while that quotation is not at the national best bid or offer ("NBBO"); (ii) a limit order that would improve the Exchange's disseminated quotation and

is marketable against quotations disseminated by other exchanges participating in the Intermarket Options Linkage (“Linkage”); and (iii) for Hybrid 3.0 classes, a limit order that would improve the Exchange’s disseminated quotation except when the disseminated quotation is represented by a manual quote. To have more flexibility and so that there is consistency in our rules, we are proposing to change these HAL order eligibility provisions to mirror the order eligibility provisions of SAL, which is a feature within CBOE’s Hybrid System that auctions eligible marketable orders for price improvement over the NBBO.

Specifically, we are proposing to modify the HAL order eligibility parameters to provide that, in addition to designating the eligible option classes, the Exchange may designate the eligible order size, eligible order type and eligible order origin code (*i.e.*, public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker dealer orders) for each class. The proposal would not, however, permit the Exchange to discriminate among individual market participants of the same type (*e.g.*, permit certain market-maker orders but not others to be eligible for the HAL auction). Any changes to the HAL eligibility parameters determined by the Exchange would be announced to the membership via Regulatory Circular.

Thus, an order would be eligible for a HAL auction if it meets these designated criteria and (i) is marketable against the Exchange’s disseminated quotation while that quotation is not at the NBBO; (ii) would improve the Exchange’s disseminated quotation and is marketable against quotations disseminated by other exchanges participating in Linkage; and (iii) for Hybrid 3.0 classes, would improve the Exchange’s disseminated quotation except when the disseminated quotation is represented by a manual quote. All other provisions of the HAL rule would apply unchanged. In this regard, the Exchange notes that orders that are not eligible for a HAL auction would continue to be treated the same as orders that are not eligible today. In Hybrid 3.0 classes, such orders would be booked (or, if not eligible for book entry, routed to PAR, BART or the order entry firm’s booth printer). For all other Hybrid classes, the Exchange would initiate the linkage process to attempt to obtain an NBBO fill for the order from an away market or book the order if it is not marketable. Also, if the Exchange determines that immediate-or-cancel (“IOC”) orders are not eligible for HAL, such orders would be automatically

cancelled to the extent they are not immediately executed against the Exchange’s existing quotes.

COA exposes eligible complex orders for price improvement. For COA, an eligible complex order is currently a complex order that, as determined by the Exchange on a class-by-class basis, is eligible for COA considering the order’s marketability (defined as a number of ticks away from the current market, size, and complex order type as defined in paragraph (a) of Rule 6.53C.<sup>5</sup> With respect to COA, we are seeking to make some cross-reference updates related to how a “COA-eligible order” is defined. First, we are seeking to modify the definition to provide that the eligible complex order type determined by the Exchange may also be as defined in paragraph (b) of Rule 6.53C.<sup>6</sup> The proposed change modifies the definition so that the Exchange can determine whether FOK, IOC, AON and GTC complex orders are eligible for COA auctions. Second, we are seeking to modify the definition to provide that the Exchange may determine the complex order origin types that are eligible for COA by adding a cross-reference to subparagraph (c)(i) of the Rule (*i.e.*, non-broker-dealer public customers, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange). The proposal would not, however, permit the Exchange to discriminate among individual market participants of the same type (*e.g.*, permit certain market-maker orders but not others to be eligible for the COA auction). The proposed change modifies the definition so that the Exchange can make determinations on eligible complex order origin type with respect to both orders into the complex order book and into COA. These modifications are also consistent with Rule 6.13A, which currently allows the Exchange to determine which simple orders are eligible for SAL based on order type and origin code. Any changes to the COA-eligible order parameters determined by the Exchange would be announced to the membership via Regulatory Circular. All other provisions of the COA rule would apply unchanged.

<sup>5</sup> Paragraph (a) defines a complex order to include a spread order, straddle order, strangle order, combination order, ratio order, butterfly spread order, box/roll spread order, collar orders and risk reversals and stock-option orders.

<sup>6</sup> Paragraph (b) defines the types of complex orders that may be entered as fill-or-kill (“FOK”), IOC, all-or-none (“AON”) or good-’til-cancelled (“GTC”).

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>8</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 Exchange believes that the proposed change would provide more flexibility in our HAL and COA rules that is consistent with parallel provisions in the existing SAL rule.

### *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*

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>9</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> The Exchange has fulfilled this requirement.

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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-2008-82 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-CBOE-2008-82. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 publicly available. All submissions should refer to File Number SR-CBOE-2008-82 and should be submitted on or before September 5, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58327; File No. SR-CBOE-2008-09]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 2, Establishing a Voluntary Professional Designation

August 7, 2008.

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 January 18, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. The proposed rule change was published for comment in the **Federal Register** on February 1, 2008.<sup>3</sup> On February 15, 2008, the Commission received a comment letter on the proposal.<sup>4</sup> On July 8, 2008, the Exchange filed Amendment No. 2 to the proposal.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change as modified.

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 57256 (February 1, 2008), 73 FR 7338 (February 7, 2008).

<sup>4</sup> See letter from Andrea Schneider to Florence E. Harmon, Acting Secretary, Commission, dated February 15, 2008 ("Schneider Letter").

<sup>5</sup> According to the Exchange, the purpose of Amendment No. 2 is to add a more complete list of Exchange rules for which the Voluntary Professional designation would apply, and to provide that the Voluntary Professional designation would not be available in Hybrid 3.0 classes. The Commission received notice of the withdrawal of Amendment No. 1 on July 2, 2008.

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

The Exchange proposes to adopt a "Voluntary Professional" designation. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), 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 III 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to allow non-broker-dealer customers to voluntarily have their orders categorized as broker-dealer orders for order handling, order execution, and cancel fee calculation purposes. Specifically, these orders would be treated as broker-dealer orders for purposes of Rules 6.2A (Rapid Opening System); 6.2B (Hybrid Opening System); 6.9 (Solicited Transactions); 6.13A (Simple Auction Liaison); 6.45 (Priority of Bids and Offers—Allocation of Trades); 6.13B (Penny Price Improvement); 6.45A (Priority and Allocation of Equity Option Trades on the CBOE Hybrid System) (except that Voluntary Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy.02); 6.45B (Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System) (except that Voluntary Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy.02); 6.53C(c)(ii) and (d)(v) and 6.53C.06(b)-(c) (Complex Orders on the Hybrid System); 6.74 (Crossing Orders) (except that Voluntary Professional orders may be considered public