

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59406; File No. SR-CBOE-2009-006)

February 13, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend CBOE Rules Relating to DPMs and LMMs

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 11, 2009, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 relating to [sic] DPMs and LMMs. The text of the proposed rule change is available on the Exchange’s Web site (www.cboe.org/Legal), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

DPMs are member organizations that function in option classes allocated to them as a Market-Maker, and also are subject to the obligations under Rule 8.85 or as otherwise provided in CBOE’s Rules. LMMs, similarly, function in option classes allocated to them as a Market-Maker, and also are subject to other obligations under Rule 8.15A (for Hybrid classes) or as otherwise provided in CBOE’s Rules. Recently, CBOE amended its rules to provide DPMs with the flexibility to operate remotely away from CBOE’s trading floor as a so-called “Off-Floor DPM.” (See, e.g., Rules 8.80 and 8.83.) The purpose of this rule filing is to amend CBOE’s rules to provide that CBOE in its discretion may appoint an “On-Floor LMM” in option classes in which an “Off-Floor DPM” is appointed. Although CBOE does not believe it is necessary for an On-Floor LMM to be appointed in each option class in which an “Off-Floor DPM” is appointed, CBOE believes that having an On-Floor LMM in an option class in which an Off-Floor DPM has been appointed provides additional flexibility and may be beneficial.

In connection with this change, CBOE also proposes to amend its rules relating to the obligations of LMMs and LMM participation entitlements, in option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed. First, CBOE proposes to amend

paragraph (b)(i) of Rule 8.15A to provide that in option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed, the On-Floor LMM shall be obligated to comply with the quoting obligations of Market-Makers in Hybrid classes as set forth in Rule 8.7(d). These obligations generally include a continuous open outcry quoting obligation and the obligation to continuously quote electronically in 60% of the series with less than nine months to expiration of each allocated class. The Off-Floor DPM would continue to be required to meet the continuous electronic quoting obligation set forth in Rule 8.85(a)(i), namely, to continuously quote in at least 90% of the series of each multiply-listed option class allocated to it and in 100% of the series of each singly-listed option class allocated to it. CBOE does not believe it is necessary to require the On-Floor LMM to satisfy the more extensive electronic quoting obligation of DPMs given that the Off-Floor DPM will be performing this function and the On-Floor LMM will not be eligible to receive a participation entitlement for transactions executed electronically. (See Rule 8.15B(b).)

CBOE also proposes to amend paragraphs (b)(iv) and (b)(vi) of Rule 8.15A to provide that the obligations set forth therein will be assigned to the Off-Floor DPM in those option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed. CBOE believes that it is appropriate that these two obligations, which pertain to the prompt initiation of an opening trading rotation and the use of a DPM's account for Linkage, be the responsibility of the Off-Floor DPM given that it will have the principal electronic quoting obligation in the option class and will be eligible to receive a participation entitlement for electronic transactions.

CBOE also proposes to amend Rule 8.15A and Rule 8.15B to provide that in option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed, the On-Floor LMM may receive a participation entitlement with respect to orders represented in open

outcry on CBOE's trading floor. CBOE believes that it is appropriate for the On-Floor LMM to receive a participation entitlement for orders represented in open outcry given that the On-Floor LMM will have a continuous open outcry quoting obligation,⁵ is expected to be continually present at the trading station and resolve disputes relating to transactions in the option classes in which the LMM is appointed, make competitive open outcry markets, and promote CBOE in a manner likely to enhance CBOE's ability to compete successfully for order flow in the classes it trades, among other obligations. CBOE notes that its rules currently provide that an Off-Floor DPM shall not receive a participation entitlement with respect to orders represented in open outcry on CBOE's trading floor, so it is reasonable for an On-Floor LMM to receive an entitlement for open outcry transactions given its obligations including the continuous open outcry quoting obligation.

Finally, CBOE notes that the provisions of Rule 8.15A not being amended by this proposed rule change will continue to apply to the On-Floor LMM that is appointed in option classes in which an Off-Floor DPM is appointed. For example, the On-Floor LMM will continue to be obligated to honor its displayed quotations (See Rule 8.15A(b)(ii)); perform these obligations for a period of one expiration cycle (See Rule 8.15A(b)(iii)); respond to open outcry requests for quotes by a floor broker (See Rule 8.15A(b)(v)); and maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information with any affiliates that conduct a brokerage operation in classes allocated to the On-Floor LMM or act as a

⁵ Rule 8.7(d) provides that Market-Makers have a continuous open outcry quoting obligation. Specifically, it states "in response to any request for quote by a floor broker, in-crowd Market-Makers must provide a two-sided market complying with the quote width requirements contained in Rule 8.7(b)(iv) for a minimum number of contracts determined by the Exchange on a class by class basis, which minimum shall be at least one contract and which minimum can vary for non-broker-dealer orders and broker-dealer orders."

specialist or Market-Maker in any security underlying options allocated to the LMM, and otherwise comply with the requirements of Rule 4.18 regarding the misuse of material, non-public information (See Rule 8.15A(b)(vii)).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (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. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act⁶ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, in that allowing CBOE to appoint an On-Floor LMM in an option class in which an Off-Floor DPM has been appointed provides additional flexibility and, therefore, could be beneficial and contribute to the maintenance of a fair and orderly market.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ Because the proposed rule change does not: (i)

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)(iii) thereunder.¹⁰

At any time within 60 days of the filing of the 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. Please include File Number SR-CBOE-2009-006 on the subject line.

Paper Comments:

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of 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. The Exchange has satisfied the pre-filing requirement.

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2009-006. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-006 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).