

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59539; File No. SR-CBOE-2009-015)

March 9, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Two Pilot Programs

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 February 27, 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 proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 two pilot programs. The text of the proposed rule change is available on the Exchange’s website ([www.cboe.org/Legal](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

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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).

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

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

The purpose of this rule change is to delete reference to two existing pilot programs in CBOE's rules that CBOE no longer utilizes and which are scheduled to expire on March 14, 2009.

One pilot program allows a Market-Maker, Off-Floor DPM, Off-Floor LMM or an e-DPM to have an affiliated Market-Maker physically present in the trading crowds where it operates as a Market-Maker, Off-Floor DPM, Off-Floor LMM, or e-DPM, respectively. The second pilot program allows a CBOE member or member firm to have multiple aggregation units operating as separate Market-Makers within the same class, provided they satisfy certain criteria set forth in Rule 8.3(c)(vi).<sup>5</sup>

CBOE notes that these pilot programs were initially adopted, in part, due to CBOE's usage of an algorithm that allocates electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer – specifically CBOE's ultimate matching algorithm "UMA." In January 2008,

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<sup>5</sup> These pilot programs previously were extended for one year until March 14, 2009. See Rel. No. 57519 (March 18, 2008), 73 FR 15805 (March 25, 2008) (immediate effectiveness of SR-CBOE-2008-29).

CBOE determined to utilize a pro-rata algorithm, instead of UMA, as the applicable matching algorithm in all Hybrid classes. As a result, these pilot programs are no longer being utilized and CBOE proposes to delete reference to them in its rules in connection with their expiration on March 14, 2009.

As amended, Rule 8.3(c)(vi) states that a Market-Maker may not hold an appointment and submit electronic quotations in any class in which an affiliated DPM, LMM or e-DPM is appointed, or in which an affiliated Market-Maker holds an appointment and submits electronic quotations, if CBOE uses in that class an allocation algorithm that allocates electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer. However, Rule 8.3(c)(vi) also notes that: (i) the foregoing restriction does not apply if CBOE uses in a particular options class an allocation algorithm that does not allocate electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer; and (ii) there is no restriction on affiliated Market-Makers holding an appointment in the same class for purposes of trading in open outcry. These exceptions are currently contained in Rule 8.3(c)(vi)(3).

## 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) Act<sup>6</sup> requirements that the rules of an exchange be designed to

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<sup>6</sup> 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest, in that deleting reference to two existing pilot programs in CBOE's rules that CBOE no longer utilizes and which are scheduled to expire on March 14, 2009 clarifies the rules that members are obligated to comply with.

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 proposed rule change 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, it has become effective pursuant to Section 19(b)(3)(A)

of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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 this requirement.

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2009-015 on the subject line.

##### Paper Comments:

- 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-2009-015. 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 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 available publicly. All submissions should refer to File Number SR-CBOE-2009-015 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>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).