

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59147; File No. SR-CBOE-2008-123)

December 22, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change to Adopt a Trade, Flash and Cancel Order Type for CBSX

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 December 3, 2008, Chicago Board Options Exchange, Incorporated (“CBOE” or the “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 by CBOE. 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 filing proposes to adopt a Trade, Flash and Cancel order type for the CBOE Stock Exchange (“CBSX”). 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.

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

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

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to revise CBSX Rule 51.8 to adopt a Trade, Flash and Cancel order type. This is a market or marketable limit order to buy or sell that is to be executed in whole or in part on CBSX immediately and automatically after it is received by the CBSX System without delay for any purpose except that it will be electronically exposed pursuant to Rule 52.6 prior to cancellation. Rule 52.6 provides that market or limit orders shall not be executed at a price that would cause a trade-through of a Protected Quotation as defined in Rule 611 of Regulation NMS; instead, these orders are “flashed” to CBSX Traders<sup>3</sup> for potential execution at a price that would not cause a trade-through.<sup>4</sup> This new order type would allow users to send orders to CBSX for execution even when CBSX is not the NBBO without requiring CBSX to seek an NBBO fill for these orders at away trading centers when price improvement on CBSX is not achieved. Thus, users can seek fills on CBSX while maintaining control over routing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the

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<sup>3</sup> “CBSX Trader” is defined in CBOE Rule 50.1. See e-mail from Angelo Evangelou, Assistant General Counsel, CBOE, to Andrew Madar, Attorney-Advisor, Commission, dated December 12, 2008.

<sup>4</sup> If a flash responder attempts to trade against the order by matching the flash price (the NBBO price at the time the order was received by the CBSX System), the order will be executed unless the system determines at the point of execution that the flash price is worse than a revised NBBO in which case the order will be cancelled. See e-mail from Angelo Evangelou, Assistant General Counsel, CBOE, to Michael J. Gaw, Assistant Director, and Andrew Madar, Attorney-Advisor, Commission, dated December 19, 2008.

Act<sup>5</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular in that, by offering users an enhanced price improvement feature and greater control over order routing, it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

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 CBOE 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 is consistent with the Act. Comments may be submitted by any of the following methods:

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

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

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-2008-123 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-2008-123. 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 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 publicly available. All submissions should refer to File Number SR-CBOE-2008-123 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>7</sup>

Florence E. Harmon  
Acting Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).