

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59038; File No. SR-CBOE-2008-118)

December 2, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Related to Obvious Error Rules

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 November 26, 2008, 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, II, and III below, which Items have been prepared by the Exchange. 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 Rule 6.25 and Rule 24.16 to adopt procedures which would allow CBOE to review transactions on its own motion. The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE 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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in

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

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

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend Rule 6.25 and Rule 24.16 pertaining to the nullification and adjustment of options transactions. Specifically, CBOE proposes to adopt a new provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the President of CBOE or his/her designee (collectively "CBOE officer"), who shall be an officer of CBOE but may not be a member, may, on his or her own motion or upon request, determine to review any transaction occurring on CBOE that is believed to be erroneous.<sup>3</sup> A transaction reviewed pursuant to this new paragraph (3) may be nullified or adjusted only if it is determined by the CBOE officer that the transaction is erroneous as provided in Rule 6.25(a)(1)-(6) or Rule 24.16(a)(1)-(6). A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction.<sup>4</sup> The CBOE officer may be assisted by Trading Officials in reviewing a transaction (or the senior official in the control room in the case of transactions being reviewed under 6.25(a)(6) or Rule 24.16(a)(6)).

The CBOE officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the

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<sup>3</sup> In the event a party to a transaction requests that the President or his/her designee review a transaction, the CBOE officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

<sup>4</sup> With regard to Rule 24.16, paragraph (c) pertaining to adjustments and nullifications would also be considered.

close of trading or due to unusual circumstances, the rule provides that the CBOE officer shall act no later than 8:30 a.m. (CT) on the next trading day following the date of the transaction at issue. A member affected by a determination to nullify or adjust a transaction pursuant to this new paragraph (3) may appeal such determination in accordance with Rule 6.25(d) or Rule 24.16(d); however, a determination by a CBOE officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. CBOE believes it is appropriate to limit review on appeal to only those situations in which a transaction is actually nullified or adjusted. Additionally, transactions adjusted or nullified pursuant to this new paragraph cannot be reviewed by an Obvious Error Panel under paragraph (c) of Rule 6.25.

This new provision is not intended to replace a party's obligation to request review, within the required time periods under Rule 6.25 and Rule 24.16, of any transaction that it believes meets the criteria for an obvious error. And, if a transaction is reviewed and a determination is rendered pursuant to paragraphs (b)(1) and (b)(2), Rule 6.25 and Rule 24.16, as amended, specifically state that relief shall not be granted under this new paragraph (b)(3).

Moreover, CBOE does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of a transaction under paragraph (b)(1) of Rule 6.25 and Rule 24.16. CBOE believes this provision will help to protect the integrity of its marketplace by vesting a CBOE officer with the authority to review a transaction that may be erroneous, in those situations where a party failed to make a timely request for a review

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities

Exchange Act of 1934 (“Act”)<sup>5</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. CBOE notes that the CBOE officer can adjust or nullify a transaction under the authority granted by this new provision only if the transaction meets the objective criteria for an obvious error under CBOE’s rules.

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

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<sup>5</sup> 15 U.S.C. 78f(b)(1).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

the Exchange 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:

##### 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-2008-118 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-CBOE-2008-118. 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 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-2008-118 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>8</sup>

Florence E. Harmon  
Acting Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).