

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59546; File No. SR-CBOE-2009-016)

March 10, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Hybrid Rule Pertaining to Orders Represented in Open Outcry

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 March 6, 2009, 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 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 make permanent the pilot program in Rule 6.45A(b) relating to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System (“Hybrid”). The text of the proposed rule change is available on the Exchange’s website (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

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).

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

In March 2005 the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.⁵ Among other things, Rule 6.45A(b), pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, Rule 6.45A(b) was amended to limit the duration of paragraph (b) of Rule 6.45A until September 14, 2005 to allow for an analysis of the application of Section 11(a)(1) of the Securities Exchange Act of 1934 to trading conducted pursuant to paragraph 6.45A(b). The duration of this paragraph was thereafter extended through March 31, 2009.⁶ The Exchange now proposes to make paragraph (b) of Rule 6.45A permanent.

⁵ See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005)(SR-CBOE-2004-75).

⁶ See Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005)(extension through December 14, 2005), 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (extension through March 14, 2006), 53524 (March 21, 2006), 71 FR 15235 (March 27, 2006)(SR-CBOE-2006-22)(extension through July 14, 2006), 54164 (July 17, 2006), 71 FR 42143 (July 25, 2006)(SR-CBOE-2006-60)(extension through October 31, 2006), 54680 (November 1, 2006), 71 FR 65554 (November 8, 2006) (SR-CBOE-2006-86)(extension through January 31, 2007), 55219 (February 1, 2007), 72 FR 6305 (February 9, 2007)(SR-CBOE-2007-10)(extension through April 30, 2007), 55676 (April 27, 2007), 72 FR 25348 (May 4, 2007)(SR-CBOE-

In connection with the elimination of subparagraph (iii) of Rule 6.45A(b) (elimination of the language providing that the effectiveness of 6.45A(b) is temporary), the Exchange will issue a regulatory circular providing members guidance on the application of Section 11(a)(1) to trading on the Hybrid System.⁷ The regulatory circular is attached as Exhibit 5 to the 19b-4 filing. The circular describes Section 11(a)(1) and certain of the exemptions to Section 11(a)(1) as well as the application of the “(G) Order” exemption and the “Effect vs. Execute” exemption (Rule 11a2-2(T)) to trading on the Hybrid System.

2. Statutory Basis

Making the rule permanent will allow the Exchange to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. Accordingly, CBOE believes the proposed rule change is consistent with the Act⁸ and the rules

2007-40)(extension through July 31, 2007), 56177 (August 1, 2007), 72 FR 44194 (August 7, 2007)(SR-CBOE-2007-89)(extension through December 31, 2007), 57054 (December 27, 2007), 73 FR 899 (January 4, 2008)(SR-CBOE-2007-149)(extension through June 30, 2008) and 58048 (June 27, 2008) 73 FR 39355 (July 9, 2008)(SR-CBOE-2008-65)(extension through December 31, 2008), 73 FR 79956 (December 30, 2008)(SR-CBOE-2008-126)(extension through March 31, 2009).

⁷ In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of CBOE Rule 6.45A(b), members are also required to comply with the requirements of Section 11(a)(1) of the Securities Exchange Act of 1934 (the “Act”), 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member’s own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange has issued regulatory circulars to members informing them of the applicability of these Section 11(a)(1) requirements each time the duration of the Rule was extended. See CBOE Regulatory Circulars RG05-103 (November 2, 2005), RG06-001 (January 3, 2006), RG06-34 (April 7, 2006), RG06-79 (July 31, 2006), RG06-115 (November 8, 2006), RG07-21 (February 8, 2007), RG07-53 (May 17, 2007), RG07-88 (August 15, 2007), RG08-08 (January 9, 2008) and RG08-83 (July 10, 2008).

⁸ 15 U.S.C. 78a et seq.

and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

The Exchange has asked the Commission to waive the 30-day operative delay to the extent necessary. The Commission believes that waiver of the operative delay is consistent with the

⁹ 15 U.S.C. 78(f)(b).

¹⁰ 15 U.S.C. 78(f)(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization 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.

protection of investors and the public interest because such waiver will enable CBOE Rule 6.45A(b) to continue without interruption. The Commission notes that the rule has been in effect on a pilot basis since March 14, 2005¹³ and therefore does not raise any novel or significant regulatory issues. Therefore, the Commission designates the proposed rule change as operative upon filing.¹⁴

At any time within 60 days of the filing of such 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-2009-016 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.

¹³ See infra notes 5 and 6.

¹⁴ For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-CBOE-2009-016. 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 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 available publicly. All submissions should refer to File Number SR-

CBOE-2009-016 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).