

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59121; File No. SR-CBOE-2008-126)

December 19, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Duration of 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 December 17, 2008, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) 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 which renders it effective upon filing with the Commission.⁵ 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 extend the duration of 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”) through March 31, 2009. No other changes are being made to the Rule. The text of the proposed rule change is

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).

⁵ The Exchange has requested that the Commission waive the 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion infra Section III.

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

In its filing with the Commission, the CBOE 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.⁶ 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. The duration of this paragraph was thereafter extended through December 31, 2008.⁷ As the duration period

⁶ See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005)(SR-CBOE-2004-75).

⁷ See Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (SR-CBOE-2005-76) (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-

expires on December 31st, the Exchange proposes to extend the effectiveness of Rule 6.45A(b) through March 31, 2009.⁸

2. Statutory Basis

Extension of the duration of the Rule will allow the Exchange to continue 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 Act⁹ 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.¹⁰ Specifically, the

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-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).

⁸ 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 Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) of the Act restricts securities transactions of a member of any national securities exchange effected on that 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).

⁹ 15 U.S.C. 78a et seq.

¹⁰ 15 U.S.C. 78f(b).

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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 proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty 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 Act¹² and Rule 19b-4(f)(6)¹³ thereunder.¹⁴

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an Exchange is required to give 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 provided notice to the Commission three business days prior to filing the proposed rule change, and the Commission has determined to waive the five business day requirement.

A proposed rule change filed under Commission Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under Rule 6.45A(b) without interruption. For this reason, the Commission designates the proposed rule change as operative upon filing.¹⁶

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 the 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

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2008-126 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-2008-126. 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 am and 3:00 pm. Copies of such 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-2008-126 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.¹⁷

Florence E. Harmon
Acting Secretary

¹⁷ 17 CFR 200.30-3(a)(12).