

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57742; File No. SR-CBOE-2008-50]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to DPMs and LMMs

April 30, 2008.

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 April 25, 2008, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Designated Primary Market-Makers (“DPMs”) and Lead Market-Makers (“LMMs”). 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 Exchange 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

CBOE is proposing to amend Rules 8.3—*Appointment of Market-Makers*, 8.85—*DPM Obligations*, and 8.91—*Limitations on Dealings of DPMs and Affiliated Persons of DPMs*, to permit Market-Maker(s) affiliated with a DPM to hold an appointment and submit electronic quotations in the same class provided CBOE uses an allocation algorithm in the class 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. Similarly, CBOE is proposing to amend Rules 8.3 and 8.15A—*Lead Market-Makers in Hybrid Classes*, to make it clear that it is permissible for Market-Maker(s) affiliated with an LMM to hold an appointment and submit electronic quotations in the same class provided CBOE uses an allocation algorithm in the class 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.<sup>5</sup> These changes are the same as and consistent with CBOE rules that already permit affiliated Market-Makers as well as Market-Maker(s) affiliated with an Electronic DPM (“e-DPM”) to hold appointments and submit electronic quotes in the same class under the same conditions.<sup>6</sup> CBOE believes this rule change will provide more flexibility for DPMs and their Market-Maker affiliates, as well as for LMMs and their Market-Maker affiliates, commensurate with what is already available for other Market-Maker participants. Accordingly, CBOE believes that the proposed rule change is designed to promote just and equitable principles of trade.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) Act<sup>8</sup> 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. In particular, CBOE believes this rule change will provide more flexibility for DPMs and their Market-Maker affiliates, as well as LMMs and their Market-Maker affiliates, commensurate with what is already available for other Market-Maker participants. It also places these various types of market participants (DPM, LMM, e-DPM) on equal footing as it relates to allowing Market-Makers affiliated with those market participants to hold appointments and submit electronic quotes in the same option classes under the same conditions.

#### 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 that is 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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,<sup>9</sup> the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-

<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)(iii).

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

<sup>5</sup> LMMs and their affiliated Market Makers will remain subject to CBOE Rule 4.18 (and Rule 8.15A(b)(vii) in the case of LMMs) regarding the prevention of the misuse of material non-public information. DPMs and their affiliated Market-Makers will remain subject to “Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs,” set forth in CBOE Rule 8.91, as well as CBOE Rule 4.18. Telephone conversation between Sonia Trocchio, Special Counsel, Division of Trading and Markets, Commission, and Patrick Sexton, Associate General Counsel, CBOE, on April 28, 2008.

<sup>6</sup> See CBOE Rule 8.3(c)(vii)(3).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> CBOE fulfilled this requirement.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

4(f)(6) thereunder.<sup>11</sup> 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.

Under Rule 19b-4(f)(6) of the Act,<sup>12</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date. The Exchange states that the proposed rule change provides the same flexibility to DPMs and LMMs that e-DPMs have in terms of allowing affiliated Market-Makers to hold an appointment and to submit electronic quotations in the same class. Moreover, CBOE believes that it would be unfair to DPMs and LMMs to have to wait 30 days for this rule change to take effect, given that such restriction is not in place for e-DPMs, and that DPMs have expressed an interest in having this rule change take effect immediately. Thus, waiving the 30-day operative period will allow the rule change to be implemented immediately and place these types of market participants on equal footing with e-DPMs. Based on these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and thus designates the proposal effective upon filing.<sup>13</sup>

#### 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-2008-50 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2008-50. 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 a.m. and 3 p.m. 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-2008-50 and should be submitted on or before May 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57734; File No. SR-CHX-2008-05]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Change the Composition of its Regulatory Oversight Committee

April 29, 2008.

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 April 21, 2008, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 its rules to change the composition of the Regulatory Oversight Committee ("ROC" or "Committee") so that this group consists of at least five Public Directors and to allow the Exchange's Vice Chairman to appoint, and the Public Directors on the Exchange's Board of Directors to approve, up to two Participant Directors to serve as non-voting advisors to the Committee. The text of this proposed rule change is available at the CHX, on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_rules.html](http://www.chx.com/rules/proposed_rules.html), and in the Commission's Public Reference Room.

#### 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 CHX included statements concerning the purpose of, and basis for, 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 Sections A, B, and C below, of

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> *Id.*

<sup>13</sup> For 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. 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<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)(iii).

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