

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59210; File No. SR-CBOE-2008-118)

January 7, 2009

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

On November 26, 2008, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CBOE Rules 6.25 and 24.16 (collectively, the “Obvious Error Rules”) to adopt procedures that would allow CBOE to review transactions on its own motion. The proposed rule change was published for comment in the Federal Register on December 8, 2008.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

The proposed rule change would provide 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, who shall be an officer of CBOE but may not be a member (collectively “CBOE officer”), may, on his or her own motion or upon request, determine to review any transaction occurring on CBOE that is believed to be erroneous.⁴ CBOE would nullify or adjust a transaction reviewed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 59038 (December 2, 2008), 73 FR 74543.

⁴ 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. In addition, if a transaction is reviewed and a determination is rendered pursuant to paragraphs (b)(1) and (b)(2) of CBOE Rule 6.25 or Rule 24.16, relief shall not be granted under the new provision of the applicable Obvious Error Rule.

pursuant to this new provision only if it is determined that the transaction is erroneous as provided in CBOE Rule 6.25(a)(1)-(6) or Rule 24.16(a)(1)-(6), as applicable.⁵ Trading Officials (or the senior official in the control room, in the case of opening trades in CBOE Rule 5.4 restricted series being reviewed under CBOE Rule 6.25(a)(6) or Rule 24.16(a)(6)) may assist the CBOE officer in reviewing a transaction.

Under the proposed rule change, the CBOE officer would be required to act as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the CBOE officer would be required to 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 provision would be permitted to 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. Transactions adjusted or nullified pursuant to this new provision cannot be reviewed by an Obvious Error Panel under paragraph (c) of Rule 6.25.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶

⁵ The transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction, including consideration of whether the parties involved are CBOE market-makers, non-CBOE market makers, or customers pursuant to CBOE Rule 6.25(a)(1)(i)-(iv) and CBOE Rule 24.16(c).

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

and, in particular, the requirements of Section 6(b) of the Act⁷ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁸ in that the proposal is 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.

The Commission notes that, in approving proposals relating to adjustment or nullification of trades involving obvious errors, it has stated that the determination of whether an obvious error has occurred and the process for reviewing such a determination should be based on specific and objective criteria and subject to specific and objective procedures.⁹ The Commission notes that the new provisions in the Obvious Error Rules also have specific and objective procedures for determining whether a trade should be adjusted or nullified. The purpose of the new provisions is only to enable a CBOE officer on his/her own motion or upon request, to provide relief in instances where parties failed to meet the established time reporting requirements in CBOE's Obvious Error Rules. The new provisions still require that the transaction be erroneous as provided in CBOE Rules 6.25 or 24.16, as applicable, and the new provisions set forth specific time frames and procedures. Therefore, the Commission believes that that proposed rule change is appropriate.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See, e.g., Securities Exchange Act Release Nos. 58778 (October 14, 2008), 73 FR 62577 (October 21, 2008) and 54228 (July 27, 2006), 71 FR 44066 (August 3, 2006) (SR-CBOE-2006-14) (approving revisions to CBOE's Obvious Error Rules).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2008-118) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).