

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59359; File No. SR-CBOE-2008-123)

February 4, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change to Adopt a Trade, Flash and Cancel Order Type for CBSX

On December 3, 2008, Chicago Board Options Exchange, Incorporated (“CBOE”) 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 adopt a Trade, Flash and Cancel order type for the CBOE Stock Exchange (“CBSX”). The proposed rule change was published for comment in the Federal Register on January 2, 2009.³ The Commission received no comments regarding the proposal.

The Commission has carefully reviewed the proposed rule change and 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 exchange⁴ and, in particular, Section 6(b)(5) of the Act,⁵ which requires that an exchange have rules designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. The Commission also believes that the proposed rule change furthers the objectives of Section 11A of the Act,⁶ as it helps to assure the economically efficient execution of securities transactions, fair competition among

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59147 (December 22, 2008), 74 FR 150.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78k-1.

brokers and dealers and among exchange markets, and the practicability of brokers executing investors' orders in the best market.

If CBSX is at quoting at the national best bid or offer (“NBBO”) when a Trade, Flash and Cancel order is submitted to CBSX, CBSX will execute the incoming order automatically against the published quotation. However, if CBSX is not quoting at the NBBO, the Trade, Flash and Cancel designation initiates a process whereby the order would be electronically exposed to CBSX traders for a period of up to three seconds, rather than routed away to other markets, in accordance with Exchange Rule 52.6(a). CBSX traders will not know the identity or the account type of the party that submitted the Trade, Flash and Cancel order.⁷ CBSX traders can respond with orders that match or better the NBBO to trade with the Trade, Flash and Cancel order. If no CBSX trader matches or improves on the NBBO by the end of the exposure period, the CBSX system will cancel the Trade, Flash and Cancel order. In no event will an execution result that is inferior to the NBBO.⁸ Use of the Trade, Flash and Cancel order is strictly voluntary. The Commission believes that the Trade, Flash and Cancel order type is a potentially useful means for order senders to control where their orders are routed and to seek price improvement. Therefore, the Commission believes that the proposal is consistent with the Act.

⁷ See e-mail from Angelo Evangelou, Assistant General Counsel, CBOE, to Michael Gaw, Assistant Director, and Andrew Madar, Special Counsel, Division of Trading and Markets, Commission, dated February 3, 2009.

⁸ The Exchange stated that, “If a flash responder attempts to trade against the order by matching the flash price (the NBBO price at the time the order was received by the CBSX System), the order will be executed unless the system determines at the point of execution that the flash price is worse than a revised NBBO in which case the order will be cancelled.” See e-mail from Angelo Evangelou, Assistant General Counsel, CBOE, to Michael Gaw, Assistant Director, and Andrew Madar, Special Counsel, Division of Trading and Markets, Commission, dated December 19, 2008.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-2008-123) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).