

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63580; File No. SR-CBOE-2010-114)

December 20, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Hybrid Opening System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 8, 2010, 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 has designated 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 modify Rule 6.2B, Hybrid Opening System (“HOSS”). The text of the proposed rule change is available on the Exchange’s website ([www.cboe.org/Legal](http://www.cboe.org/Legal)), at the Exchange’s Office of the Secretary and at the Commission.

---

<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).

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

HOSS is a feature within CBOE's Hybrid System that is used for conducting trading rotations. The Exchange is proposing to amend the HOSS rule in various respects.

First, to have more flexibility in a manner that is consistent with other CBOE rules with order eligibility provisions, the Exchange is proposing to amend the HOSS rule to include an order eligibility provision. In particular, Rule 6.2B will be amended to provide that the Exchange shall designate the eligible order size, eligible order type, eligible order origin code (i.e., public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders) that HOSS will accept for rotations on a class-by-class basis. The proposal would not, however, permit the Exchange to discriminate among individual market participants of the same type (e.g., permit certain market-maker orders but not others to be eligible). The Rule will also be amended to delete a reference to spread orders and contingency order [sic] not being eligible to participate in HOSS opening trades or in the determination of the opening price, expected opening price or expected opening size. (As revised, the Exchange would determine whether to designate these orders types as

eligible for HOSS on a class-by-class basis, just as it would for any other order type.) Any changes to the HOSS order eligibility parameters determined by the Exchange would be announced to CBOE Trading Permit Holders via Regulatory Circular.

This proposed change to include order eligibility requirements within the HOSS rule is consistent with the order eligibility requirements contained in other rules that pertain to features within CBOE's Hybrid System, such as the order eligibility requirements for Rule 6.13A, Simple Auction Liaison (SAL) (SAL is a feature within the Hybrid System that auctions marketable orders for price improvement over the national best bid and offer), and Rule 6.14, Hybrid Agency Liaison (HAL) (HAL is a feature within the Hybrid System that provides automated order handling in designated classes trading on Hybrid for qualifying electronic orders that are not automatically executed by the Hybrid System). The proposed rule change is also consistent with the provisions of Rule 6.53, Certain Types of Orders Defined, which provides that the classes and/or systems (e.g., the HOSS, SAL and HAL systems) for which the orders types described in Rule 6.53 shall be available will be as provided in the Exchange Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

Second, the Exchange is proposing to adopt new Interpretation and Policy .04 regarding the applicable allocation algorithm<sup>5</sup> for HOSS and to make related changes to Interpretation and Policy .03. Currently, there are various rotations procedures set forth in

---

<sup>5</sup> The allocation algorithms include price-time, pro-rata, and the ultimate matching algorithm ("UMA") base priorities and a combination of various optional priority overlays pertaining to public customer priority, Market-Maker participation entitlements, small order preference, and market turner. See Rules 6.45A, Priority and Allocation of Equity Option Trades on the CBOE Hybrid System, and 6.45B, Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System.

Rule 6.2B, such as the regular HOSS rotation procedure described in Rule 6.2B(a)-(g), the modified HOSS rotation procedure for Hybrid 3.0 classes described in Rule 6.2B.01, and the HOSS Hybrid Agency Liaison (“HAL) for openings (referred to herein as the “HOSS HAL-O” procedure) described in Rule 6.2B.03. Right now the Rule does not specifically identify the applicable allocation algorithm for the HOSS and modified HOSS rotation procedures. Paragraph (c)(iv) of the Rule simply states that in determining the priority of orders and quotes to be traded, the System gives priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price. For the HOSS HAL-O rotation procedure, Rule 6.2B.03 provides that the system gives priority to public customer market orders first (with multiple orders ranked based on time priority), then to non-public customer market orders second (with multiple orders being ranked based on time priority), then to multiple quotes and orders whose price is better than the opening price (with multiple quotes and orders being ranked in accordance with the allocation algorithm in effect for the option class pursuant to Rule 6.45A or 6.45B), then to limit orders and quotes at the opening price (with multiple orders and quotes ranked in accordance with the allocation algorithm in effect for the class pursuant to Rule 6.45A or 6.45B).

The Exchange is proposing to remove the specific allocation algorithm description for HOSS HAL-O rotations in Interpretation and Policy .03(c)(i) of Rule 6.2B. Instead, the provision will be amended provide [sic] that, in determining the priority of orders and quotes to be traded, the System will give priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price (this description is the same as is currently provided in Rule 6.2B(c)(iv)

and noted above). The Exchange is also proposing to adopt new Interpretation and Policy .04 to Rule 6.2B. Proposed Interpretation and Policy .04 to Rule 6.2B will provide that the Exchange may determine on a class-by-class basis which electronic allocation algorithm would apply for rotations (whether using the HOSS, modified HOSS or HOSS HAL-O rotation procedure). This change will also provide the Exchange with additional flexibility to permit the allocation algorithm in effect for a rotation to be different from the allocation algorithm in effect for the option class. All pronouncements regarding allocation algorithm determinations by the Exchange will be announced to CBOE Trading Permit Holders via Regulatory Circular.

In conjunction with this change, the Exchange is also proposing to modify Rule 6.2B to codify and describe the manner in which HOSS handles opening imbalances in series that open at a minimum price increment (e.g., a series that opens at a price of \$0.05 when the series is quoted in \$0.05 increments and a series that opens at a price of \$0.01 when the series is quoted in \$0.01 increments). In those scenarios, HOSS opens even if a sell market order imbalance exists. In addition, the Exchange may determine to apply a separate electronic allocation algorithm for series that open at a minimum price increment due to a sell market order imbalance. As indicated above, pronouncements regarding allocation algorithm determinations will be announced via Regulatory Circular

The matching algorithm applied for rotations for each option class will be pursuant to Rule 6.45A or 6.45B, as applicable. Thus, the Exchange is not creating any new algorithms, but is amending Rule 6.2B to make clear that the Exchange may determine the applicable allocation algorithm for rotations as described above and to provide the flexibility for the Exchange to choose an algorithm from among the existing algorithms to be applied to

rotations, rather than simply defaulting to the algorithm in effect for intra-day trading in the option class.

Finally, the Exchange is proposing non-substantive amendments to Rule 6.2B, so that the rule text can generally be more consistently organized, numbered and worded. For example, the Exchange is proposing to add descriptive headings to each section of the rule, and to replace multiple references to Exchange determinations being announced via Regulatory Circular with a single reference in proposed Interpretation and Policy .05, which will provide that all pronouncements regarding determinations by the Exchange pursuant to Rule 6.2B and the Interpretations and Policies thereunder will be announced to Trading Permit Holders via Regulatory Circular.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed change would provide more flexibility and clarity in its HOSS rule. The Exchange also believes that the proposed HOSS order eligibility provision is consistent with order eligibility provisions in other existing rules, such as the SAL, HAL and order type rules.

---

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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 Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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.

---

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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

#### 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-2010-114 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.

All submissions should refer to File Number SR-CBOE-2010-114. 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 website viewing and printing 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-2010-114 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.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

---

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