

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63235; File No. SR-CBOE-2010-099)

November 3, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Short Sell Order Handling

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 October 26, 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 is proposing to amend CBOE Stock Exchange, LLC’s (“CBSX,” the CBOE’s stock trading facility) rules to describe the manner in which the CBSX System⁵ will

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 “CBSX System” means the electronic system which performs the functions set out in the CBSX rules including controlling, monitoring, and recording trading by CBSX Traders through CBSX Workstations and trading between CBSX Traders. See Rule 50.1(a). A “CBSX Trader” means an individual who or organization which has the right to trade on CBSX. See Rules 50.1(f) and 50.3. A “CBSX Workstation” means a computer connected to CBSX for the purposes of trading pursuant to the

handle short sell orders in relation to Rule 201 of Regulation SHO,⁶ and CBOE's rules to include order marking requirements for stock-option orders. The text of the proposed rule change is 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 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

Rule 201 of Regulation SHO under the Act⁷ sets forth a short sale-related circuit breaker that, if triggered, will impose a restriction on the prices at which NMS stocks⁸ may be sold short. In anticipation of the upcoming November 10, 2010 compliance date for Rule

CBSX rules. See Rule 50.1(d).

⁶ 17 CFR 242.201. See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO, 17 CFR 242.200(g), was amended to include a "short exempt" marking requirement. The amendments to Rule 201 and Rule 200(g) have a compliance date of November 10, 2010.

⁷ Id.

⁸ 17 CFR 242.201(a)(1).

201,⁹ the Exchange is proposing to amend CBSX’s rules to describe the manner in which the CBSX System will handle short sell orders when a circuit breaker is triggered under Rule 201 of Regulation SHO.

In particular, the Exchange is proposing to adopt Interpretation and Policy .02 to its Rule 51.8, Types of Orders Handled, to provide that orders in equity securities that are submitted to the CBSX System must be marked “long,” “short,” or “short exempt” in compliance with Regulation SHO.¹⁰ The Interpretation and Policy will also provide that, if a short sale-related circuit breaker is triggered under Regulation SHO, orders marked “short” will be handled by the CBSX System as follows: First, short sell orders that are resting in the CBSX Book¹¹ at the time a circuit breaker is triggered will be permitted to continue resting and/or execute. The Exchange believes this handling of resting short sell orders is consistent with Rule 201 because resting orders by definition are priced above the National Best Bid.¹² Second, short sell orders that are received by the CBSX System after the time a circuit breaker is triggered that are priced above the National Best Bid will be permitted to rest and/or execute. The Exchange believes this handling of incoming short sell orders is

⁹ See supra note 6.

¹⁰ 17 CFR 242.200(g).

¹¹ The “CBSX Book” means all unexecuted orders currently held by the CBSX System. See Rule 50.1(c). The Exchange notes that additional size cannot be added to an order resting in the CBSX Book. The Exchange also notes that it currently does not make available any resting order types that are to be completely un-displayed in the CBSX Book. To the extent the Exchange may determine to make available such an un-displayed resting order type, it would be subject to a rule filing submitted pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b).

¹² 17 CFR 242.201(b)(1).

consistent with Rule 201 because the orders are priced above the National Best Bid.¹³ Third, short sell orders that are received by the CBSX System after the time a circuit breaker is triggered that are priced at or below the National Best Bid will be rejected/cancelled by the CBSX System. The Exchange believes this handling of incoming short sell orders is consistent with Rule 201 because the orders are not priced above the National Best Bid.¹⁴

The Exchange notes that, under these procedures, a reserve sell order¹⁵ that is marked “short” will be handled the same as any other sell order marked “short.” Thus, an incoming reserve sell order that is received by the CBSX System after the time a circuit breaker is triggered that is marked “short” and that is priced at or below the National Best Bid will be rejected/cancelled by the CBSX System. An incoming reserve sell order that is received by the CBSX System after the time a circuit breaker is triggered that is marked “short” and that is priced above the National Best Bid will be permitted to rest and/or execute. The Exchange also notes that the entire size of a reserve sell order that is marked “short” and resting in the CBSX Book – both the displayed portion and the reserve portion at the same price that is not displayed – will be permitted to rest and/or execute. This handling will apply to reserve orders resting in the CBSX Book at the time a circuit breaker is triggered or to incoming reserve orders that rest in the CBSX Book after a circuit breaker is triggered. The Exchange believes this handling of reserve orders marked “short” is consistent with Rule 201 because

¹³ Id.

¹⁴ Id.

¹⁵ A “reserve order” is a limit order with a portion of the size that is to be displayed and with a reserve portion of the size at the same price that is not to be displayed, but is to be used to refresh the displayed size when the displayed size is executed in full. See Rule 51.8(o).

resting reserve orders that are marked “short” by definition are priced above the National Best Bid at the time of initial display.¹⁶

Sell orders marked “short exempt” will be permitted to rest and/or execute without regard to when the order is received or whether the order is priced above, at or below the National Best Bid. This handling of sell orders marked “short exempt” would be applied by the CBSX System at all times – without regard to whether a circuit breaker is triggered. The Exchange believes this handling by CBSX of sell orders marked “short exempt” is consistent with Rule 201, which permits the execution or display of a short sell order in an NMS stock marked “short exempt” without regard to whether the order is at a price that is less than or equal to the current National Best Bid.¹⁷

The Exchange is also proposing to amend Interpretation and Policy .06 to its Rule 6.53C, Complex Orders on the Hybrid System, to include an order marking requirement for stock-option orders. In particular, the Exchange is proposing to provide that, if the stock leg of a stock-option order submitted to CBOE’s electronic complex order book (referred to in the rules as “COB”)¹⁸ or electronic complex order request for response auction (referred to in

¹⁶ 17 CFR 242.201(b)(1)(iii)(A).

¹⁷ See Rule 201(b)(1)(iii)(B) of Regulation SHO, 17 CFR 242.201(b)(1)(iii)(B). The Exchange notes that a broker or dealer may mark a sell order “short exempt” only if the provisions of Rule 242.201(c) or (d) are met. See Rule 200(g)(2) of Regulation SHO, 17 CFR 242.200(g)(2).

¹⁸ See Rule 6.53C(c).

the rules as “COA”)¹⁹ is a sell order, then the stock leg must be marked “long, “short,” or “short exempt” in compliance with Regulation SHO.²⁰

Finally, the Exchange is proposing to make non-substantive technical updates to its Rule 53.5, “Long” and “Short” Sales. In particular, the Exchange is proposing to change the title of the rule to “‘Long,’ ‘Short’ and ‘Short Exempt’ Sales” and to delete an outdated reference to SEC Rule 10a-1 (which no longer exists and has been superseded by Regulation SHO).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,²¹ in general, and, in particular, furthers the objectives of Section 6(b)(5) of the Act,²² which requires that an exchange have rules that are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. In particular, the Exchange believes the proposed change will provide clarity on the short sell order handling procedures that the CBSX System will apply when a short sale-related circuit breaker is triggered under Rule 201 of Regulation SHO in a manner that the Exchange believes is consistent with Regulation SHO.

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.

¹⁹ See Rule 6.53C(d).

²⁰ 17 CFR 242.200(g).

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

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 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act²³ and Rule 19b-4(f)(6) thereunder.²⁴

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.²⁵ However, Rule 19b-4(f)(6)²⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow updating of its rules before the November 10, 2010 compliance date of the amendments to Rule 200(g) and 201 of Regulation SHO²⁷ and thereby provide clarity on the short sell order handling procedures that the CBSX System will apply when a short sale-related circuit breaker is triggered under Rule 201 of Regulation SHO. The Commission believes that waiving the 30-day operative delay is consistent with the

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6). In addition, CBOE has given 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 on which the Exchange filed the proposed rule change.

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

²⁶ Id.

²⁷ 17 CFR 242.200(g); 17 CFR 242.201.

protection of investors and the public interest because the waiver will provide clarity to market participants that trade on CBSX System on the handling of certain orders in light of the amendments to Regulation SHO.²⁸ The Commission also believes that the proposed rule change does not raise any new or novel issues. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.²⁹

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.

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. Please include File Number SR-CBOE-2010-099 on the subject line.

Paper comments:

²⁸ Id.

²⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- 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-2010-099. 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 Web site 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 a.m. and 3:00 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-2010-099 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.³⁰

Florence E. Harmon
Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).