

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53414; File No. SR-CBOE-2006-25)

March 3, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Rule 8.4 to Extend for an Additional Year a Pilot Program Relating to RMM Multiple Aggregation Units

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 March 2, 2006, the Chicago Board Options Exchange, Incorporated (“CBOE” 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 prepared by the CBOE. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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<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).

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

<sup>5</sup> As required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii), the CBOE submitted 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 of filing.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 8.4 to extend for an additional year a pilot program relating to Remote Market Makers ("RMMs") multiple aggregation units.<sup>6</sup> The text of the proposed rule change is below. Proposed additions are underlined and proposed deletions are in [brackets]:

Rule 8.3 – Appointment of Market-Makers

Rule 8.3. This Rule governs the appointment of Market-Makers other than Remote Market-Makers. Rule 8.4 governs the appointment of Remote Market-Makers.

(a) No change.

(b) No change.

(c) Absent an exemption by the appropriate Market Performance Committee, an appointment of a Market-Maker confers the right to quote as described below:

(i) No change.

(ii) No change.

(iii) Additionally, a Market-Maker that is submitting electronic quotations in his/her appointed Hybrid and Hybrid 2.0 Classes can submit electronic quotations in either two (2) additional Hybrid 2.0 Classes in Tier A or Tier B that are not located in the Market-Maker's appointed trading station, or five (5) additional Hybrid 2.0 Classes in Tiers C, D, or E that are not located in the Market-Maker's appointed trading station. (For purposes of this paragraph, the Exchange is using the Tiers set forth in Rule 8.4 that have been structured for purposes of RMM appointments.) A Market-Maker

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<sup>6</sup> The Commission notes that the Exchange is also amending a cross-reference to this program contained in CBOE Rule 8.3.

cannot be affiliated with an e-DPM or RMM that holds an appointment in any of these additional Hybrid 2.0 Classes. Pursuant to a Pilot Program that expires on September 14, 2006, a Market-Maker can be affiliated with another Market-Maker (“Affiliated Market-Maker”) who holds an appointment in one of these additional Hybrid 2.0 Classes, provided the Market-Maker cannot submit electronic quotations in these additional Hybrid 2.0 Classes if the Affiliated Market-Maker is submitting electronic quotations from outside its appointed trading station. Pursuant to a Pilot Program that expires on March 14, 2007[2006], if both Market-Makers operate as multiple aggregation units under the criteria set forth in Rule 8.4(c)(ii), the preceding restriction does not apply.

(d) No Change.

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#### Rule 8.4 – Remote Market-Makers

Rule 8.4. (a) No Change.

(b) No change.

(c) Affiliation Limitations: Except as provided in subparagraphs (i) or (ii), an RMM may not have an appointment as an RMM in any class in which it or its member organization serves as DPM, e-DPM, RMM, or Market-Maker on CBOE.

(i) No change.

(ii) A CBOE Member or Member Firm may have, as part of a pilot program until March 14, 2007[2006], multiple aggregation units operating as separate RMMs within the same class provided:

(A) No change.

(B) No change.

(C) No change.

(d) No change.

(e) No change.

(f) No change.

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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 CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to extend for an additional year, until March 14, 2007, an existing Pilot Program which allows a CBOE member or member firm to have multiple aggregation units operating as separate RMMs within the same class, provided they satisfy certain criteria set forth in CBOE Rule 8.4(c)(ii)(A)-(C).

In March 2005, CBOE amended its rules to establish a new membership status called RMM, who have the ability to submit quotes to the CBOE from a location outside of the physical trading station of the RMM's appointed class.<sup>7</sup> In connection with the adoption of these rules,

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<sup>7</sup> See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (approving SR-CBOE-2004-75).

CBOE also adopted provisions in its rules relating to RMM affiliation limitations. Specifically, CBOE Rule 8.4(c) provides that except as otherwise provided, an RMM may not have an appointment as an RMM in any class in which it or its member organization serves as DPM, e-DPM, RMM, or Market-Maker on CBOE. One exception that was approved on a pilot basis was the ability of a CBOE member or member firm to have multiple aggregation units operating as separate RMMs within the same class, provided certain specific criteria were complied with.<sup>8</sup> These criteria were set forth in subparagraphs (A) through (C) of CBOE Rule 8.4(c)(ii), and were based on the criteria contained in Regulation SHO which was approved by the Commission in July 2004.

CBOE's believes that the Pilot Program has been successful, in that it allows a CBOE member or member firm to have multiple aggregation units operating as separate RMMs within the same class, provided they comply with certain specific criteria. CBOE has not experienced any negative effects with respect to the Pilot Program. Thus, CBOE believes it would be appropriate and beneficial to extend this Pilot Program for an additional year, until March 14, 2007.

## 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>9</sup> Specifically, the Exchange believes the proposed rule

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<sup>8</sup> A second exception, also adopted on a pilot basis for a period ending September 14, 2006 and contained in CBOE Rule 8.4(c)(i), permits a member or member firm operating as an RMM in a class to have one Market-Maker affiliated with the RMM organization trading in open outcry in any specific class allocated to the RMM, provided such Market-Maker trades on a separate membership.

<sup>9</sup> 15 U.S.C. 78f(b).

change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>10</sup> which requires 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The CBOE has neither solicited nor received comments on the proposed rule change.

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 and Rule 19b-4(f)(6) thereunder.

Normally, a proposed rule change filed under Rule 19b-4(f)(6) does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

The CBOE has asked the Commission to waive the 30-day operative delay. Allowing a CBOE member or member firm to have multiple aggregation units operating as separate RMMs within the same class, subject certain specific requirements, does not raise any new or unique issues.<sup>11</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the continuation of this practice may enhance competition and liquidity.<sup>12</sup> For this reason, the Commission designates that the proposal has become effective and operative immediately upon filing with the Commission. At any time within 60 days of the filing of the 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.<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-2006-25 on the subject line.

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<sup>11</sup> See *supra*, at n.7.

<sup>12</sup> 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. 15 U.S.C. 78c(f).

<sup>13</sup> See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

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-2006-25. 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. 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-2006-25 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris  
Secretary

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