

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57615; File No. SR-CBOE-2007-120)

April 3, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to Market-Makers and Remote Maker-Makers

On October 11, 2007, 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 relating to Market-Makers and Remote Market-Makers (“RMMs”). On February 13, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change was published for comment in the Federal Register on February 29, 2008.⁴ On April 2, 2008, the Exchange submitted Amendment No. 2 to the proposed rule change.⁵ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

CBOE proposes to amend its rules relating to Market-Makers and RMMs. The Exchange notes that, since the time the RMM rules were adopted, the ability of Market-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment 1 replaced the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 57367 (February 21, 2008), 73 FR 11168 (“Notice”).

⁵ In Amendment No. 2, CBOE made minor revisions to the proposed rule text to reflect changes made in a subsequent rule filing that extended two of the Exchange’s pilot programs. See Securities Exchange Act Release No. 57519 (March 18, 2008) 73 FR 15805 (March 25, 2008) (“Pilot Extension”). These changes are technical and are not subject to public comment.

Makers to quote from a location outside of the trading crowd or trading floor has expanded. CBOE also states that the existing obligations of Market-Makers and RMMs are generally the same. CBOE therefore does not see a reason to maintain the RMM category of market participant and proposes to delete all references to RMMs in its rules. In connection with this change, CBOE's proposal also: (i) amends the definition of Market-Maker to include member organizations; (ii) amends CBOE Rule 3.3 to clarify that the member organization membership statuses that are approved by the Membership Committee include Market-Maker; and (iii) deletes Interpretation and Policy .02 to CBOE Rule 3.8, and amends CBOE Rule 3.8(a)(ii), to allow any member organization that is the owner or lessee of more than one membership to designate one individual to be the nominee for all memberships utilized by the organization (except that, for each membership utilized for trading in open outcry on the trading floor, the organization must designate a different individual to be the nominee for each of the memberships).

CBOE also proposes to reorganize the text of two of the Exchange's pilot programs relating to the ability of e-DPMs, Off-Floor DPMs, and RMMs to have affiliated Market-Makers in the same class and clarify that they would no longer apply to RMMs.⁶ The Exchange also is adding a new provision to CBOE Rule 8.3 that provides that there is no restriction on affiliated Market-Makers holding an appointment and submitting electronic quotations in the same class, provided CBOE uses an allocation algorithm in the class that does not allocate electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or

⁶ In the Notice, the Exchange indicated that it proposed extending these pilot programs for an additional year. This extension was subsequently made in a separate filing. See Pilot Extension in note 5, supra.

offer.⁷

The Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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.⁹ Specifically, the Commission finds that it is consistent with the Act for CBOE to clarify, update, and consolidate the Exchange's rules related to Market-Makers and their obligations on the Exchange.

⁷ CBOE's proposal also: (i) amends CBOE Rule 8.3 to provide that the appointment of a Market-Maker to a certain option class can be made by the Market-Maker's selection or by CBOE, consistent with certain criteria set forth in CBOE Rule 8.3; (ii) amends CBOE Rule 8.3 to delete the requirement that a Market-Maker may hold an appointment in an appropriate number of Hybrid option classes that are located at one trading station; (iii) amends CBOE Rule 8.7 to delete references to RMMs and other outdated references, and (iv) updates or deletes outdated provisions in other CBOE Rules, including CBOE Rule 8.3A relating to Class Quoting Limits.

⁸ 15 U.S.C. 78f(b)(5).

⁹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2007-120), as amended, is 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).