

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57937; File No. SR-CBOE-2008-58)

June 6, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow the Exchange to Determine to Permit Electronic Exposure of SAL, HAL, and/or COA Orders to All CBOE Market-Makers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 3, 2008, 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, II, and III below, which Items have been substantially prepared by CBOE. The Exchange filed 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 proposes to modify Rules 6.13A, Simple Auction Liaison (“SAL”), 6.14, Hybrid Agency Liaison (“HAL”), and 6.53C(d), Process for Complex Order RFR Auction (“COA”), so that the Exchange may determine on a class-by-class basis to permit electronic exposure of SAL, HAL and/or COA orders to all CBOE Market-Makers to give additional opportunities to provide the orders with the best price. The text of the proposed rule change is

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).

available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, CBOE 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 aspects of such statements.

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

1. Purpose

In classes where SAL, HAL and/or COA are activated, orders are electronically exposed to all Market-Makers appointed to the relevant option class as well as all members acting as agent for orders at the top of the Exchange's book ("Qualifying Members") in the relevant options series. During the applicable exposure period, the orders that are subject to exposure are eligible to receive a better price.⁵ At the conclusion of the SAL, HAL or COA process, as

⁵ SAL is a feature within CBOE's Hybrid System that auctions eligible marketable orders for price improvement over the national best bid or offer ("NBBO"). See Rule 6.13A. HAL is a feature within CBOE's Hybrid System that provides automated order handling for eligible market and limit orders if: (i) the market orders or limit orders are marketable against the Exchange's disseminated quotation while that quotation is not at the NBBO; (ii) the limit orders would improve the Exchange's disseminated quotation and are marketable against quotations disseminated by other exchanges participating in the Intermarket Options Linkage ("Linkage"); and (iii) for Hybrid 3.0 classes, the limit orders would improve the Exchange's disseminated quotation, except when the disseminated quotation is represented by a manual quote. See Rule 6.14. COA is a

applicable, the order is then allocated pursuant to the allocation algorithms described in the relevant rules. In addition, in the case of HAL, if no responses are received or if there remains an unexecuted portion of a marketable order, then the remaining balance of the order will be routed through Linkage to a competing exchange(s).⁶ When an order is sent through Linkage, the other exchange charges an execution fee. The cost of sending the order through Linkage can be substantial, particularly with respect to other options exchanges that have adopted a maker-taker fee schedule.⁷

feature within CBOE's Hybrid System that auctions eligible complex orders for price improvement. See Rule 6.53C.

⁶ If the remaining order balance is for the account of a public customer and is marketable against another exchange that is a participant in Linkage, then HAL will route a Principal Acting as Agent Linkage Order ("P/A Order") on behalf of the remaining order balance through the Linkage and any resulting execution of the P/A Order will be allocated to that order. If the remaining order balance is marketable against another exchange that is a participant in Linkage but is not for the account of a public customer, then HAL will route a Principal Linkage Order ("P Order") on behalf of the Remaining Order through the Linkage and any resulting execution of the P Order will be allocated to the remaining order. In either situation above, if the Linkage order cannot be transmitted from the Exchange because the price of the Linkage order (or a better price) is no longer available on any market, then HAL will, pursuant to normal order allocation processing, execute the remaining order balance against the Exchange's existing quote (provided such execution would not cause a trade-through) or, if the Exchange's quote is inferior to the Exchange's best bid or offer at the time the order was received by HAL ("Exchange Initial BBO"), against the Market-Makers that constituted the Exchange Initial BBO at a price equal to the Exchange Initial BBO. If the remaining order is not marketable (either on CBOE or another exchange), it will be entered into the Hybrid book for dissemination. See Rule 6.14(b)(i) – (iii).

⁷ Several options exchanges have adopted a fee structure in which firms receive a rebate for the execution of orders resting in the limit order book (i.e., posting liquidity) and pay a fee for the execution of orders that trade against liquidity resting on the limit order book (i.e., taking liquidity). Taker fees currently range up to \$0.45 per contract and are charged without consideration of the order origin category, including public customer orders. In contrast, CBOE does not generally charge a fee for the execution of public customer orders that are routed directly to our market. The effective price paid by a customer purchasing an option can be considerably higher on an exchange that charges a

In order to offer additional opportunities for price improvement and, in the case of HAL, to retain as much order flow as possible on CBOE and to help reduce costs associated with the number of orders sent through Linkage,⁸ CBOE proposes to allow the Exchange to determine on a class-by-class basis to permit responses to orders exposed through SAL, HAL and/or COA to be submitted by all CBOE Market-Makers (not just Market-Makers appointed to the relevant option class) and Qualifying Members. This would provide for additional opportunities to provide orders with price improvement and, in the case of HAL, to provide those orders with the best price on CBOE instead of routing the order through Linkage.

For such classes, each CBOE Market-Maker that submits a response to trade with an order during the response period would be entitled to receive an allocation of the order in accordance with the existing allocation algorithms in effect for the option class, as described in

taker fee. For example, a customer that enters a marketable limit order to buy 10 contracts for \$0.10 would pay \$100 on CBOE and \$104.50 if executed on an exchange that charges a \$0.45 taker fee (an effective 4.5% increase). Because orders cannot be executed at prices inferior to the NBBO, members are effectively forced to pay taker fees when an exchange with a taker fee structure is at the NBBO and the members' orders are directly routed to such an exchange or indirectly routed to such an exchange through Linkage (where the fees are passed through).

⁸ Outbound Linkage costs are incurred by CBOE and its members. CBOE currently rebates DPM transaction fees generated from transactions against customer orders that underlie outbound PA and P Orders ("CBOE Transactions"). In addition, when DPMs incur fees to execute PA or P Orders at other exchanges ("Away Transactions"), those DPMs are credited an additional amount per contract to offset such fees. CBOE also credits DPMs an additional amount per contract on both CBOE Transactions and Away Transactions to offset the Sales Value Fee (which offsets fees payable to the Commission under Section 31 of the Act), the Options Clearing Corporation ("OCC") per contract fee applicable to market-makers and specialists set forth on the OCC Schedule of Fees, and an estimated average clearing firm per contract fee. In the case of a P Order, the Exchange also passes through the total amount of the credits above to the member that originated the order underlying the P Order. See Section 21 of the CBOE Fees Schedule.

the SAL, HAL and COA rules, as applicable. All other provisions of the SAL, HAL and/or COA rules, as applicable, would apply unchanged.

To the extent the Exchange determines to permit all CBOE Market-Makers to respond to SAL, HAL and/or COA, the Exchange may also determine to apply a seat cost, if any, to Market-Makers not assigned to the class that elect to receive the SAL, HAL and/or COA messages. Any such seat cost so determined by the Exchange would be submitted to the Commission in a separate rule filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁹ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁰ 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 give additional opportunities to provide orders executions at improved prices and, in the case of HAL, executions at the NBBO on CBOE and reduce costs by reducing the number of Linkage orders sent to other exchanges.

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 not necessary or appropriate in furtherance of the purposes of the Act.

⁹ 15 U.S.C. 78f(b).

¹⁰ 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: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

At any time within 60 days of the filing of such 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.

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:

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

- 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-2008-58 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-58. 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, 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-2008-58 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.¹³

Florence E. Harmon
Acting Secretary

¹³ 17 CFR 200.30-3(a)(12).