

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58978; File No. SR-CBOE-2008-116)

November 19, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend CBOE Rules Relating to an Expansion of the SPX Trading Crowd

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 November 19, 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 and II below, which Items have been prepared by the Exchange. 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 amend its rules relating to the physical expansion of a trading crowd. 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’s Public Reference Room.

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

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).

In its filing with the Commission, the self-regulatory organization 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE recently completed an expansion of the back area of the SPX options trading crowd, which will result in a number of new trading spaces opening up in the trading crowd. In anticipation of the expansion, CBOE is filing this proposed rule change to describe the objective processes that it may utilize to determine which individuals can use one of the new trading spaces that are available, provided the demand for trading spaces in the trading crowd exceeds the supply.

Historically, an order in time process has generally been applied to determine which individuals can use new trading spaces in a crowd located on the CBOE trading floor. Recently CBOE codified in its rules pursuant to Commission approval objective processes pertaining to the issuance of new Interim Trading Permits ("ITPs") through either a random lottery process or order in time process, in anticipation that the demand for the ITPs would exceed the supply.⁵ In the event the demand for trading spaces in the back area of the SPX trading crowd exceeds the supply, CBOE is adopting similar processes to determine which individuals can use one of the new trading spaces. Specifically, CBOE may choose to utilize either a random lottery process or

⁵ See Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008), approving SR-CBOE-2008-40.

an order in time process, which are the two objective processes that CBOE recently codified for the issuance of ITPs. CBOE notes that when it adopted these two processes for the issuance of ITPs, the rule filing did not receive any negative comments from its members relating to these objective processes. Instead, CBOE believes that the issuance of ITPs using the random lottery process was a positive experience, and now seeks to apply one of these two processes in the context of the physical expansion of the SPX trading crowd.

Under either of the processes that it chooses to utilize, CBOE would announce a deadline by which an approved individual CBOE member who desires to use the trading space can submit an indication of interest for one of the available trading spaces in the back area of the SPX trading crowd. Only those individuals who are approved members of CBOE would be eligible to submit an indication of interest, and the individual who would be using the trading space must be an effective member under CBOE Rule 3.10 (i.e., must be on a membership⁶), a temporary member, or ITP Holder at the time of the random lottery process or the order in time process. If an existing member of the SPX trading crowd submits an indication of interest, is “selected” through the random lottery process or the order in time process and chooses a new trading space in the back area of the SPX trading crowd, that member’s prior trading space would be deemed vacant.

After the deadline for indications of interest has passed, the available trading spaces in the back area of the SPX trading crowd would be allocated through a random lottery process or an order in time process.⁷ Each individual member who is “selected” through either the random

⁶ Being “on a membership” means that the member has satisfied the applicable requirements to obtain a membership and a membership has been released to that member by the Exchange’s Membership Department.

⁷ A member who selects a trading space following the random lottery process or the order in time process does not obtain any ownership right in that particular trading space. In

lottery process (based on the lottery selection sequence) or the order in time process (based on time sequence) would choose the new trading space where he or she would like to stand.

CBOE believes that these processes would provide for the issuance of new trading spaces in an objective manner and consequently would provide for fair access to the Exchange.

2. Statutory Basis

The proposed rule change would permit the Exchange to allocate new trading spaces in the SPX trading crowd pursuant to one of two objective processes: a random lottery process or an order in time process. CBOE notes that both of these processes have been codified in connection with the issuance of ITPs in a prior filing that was approved by the Commission. As a result, 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.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act⁹ requirements 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. CBOE believes that these processes would provide for the issuance of new trading spaces in an objective manner and consequently would provide for fair access to the Exchange.

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.

the event a space dispute should arise, the crowd space dispute resolution procedures in Rule 24.21 will continue to apply.

⁸ 15 U.S.C. 78f(b).

⁹ 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 rule 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

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.¹² However, Rule 19b-4(f)(6)(iii)¹³ 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 because it has now completed the expansion of its SPX trading crowd and has recently come to believe that the demand for additional trading spaces may exceed the newly available supply. To respond to this possibility, CBOE would like the flexibility to utilize a lottery process when it allocates the additional space in the next several days. CBOE notes that its proposed rule change is a copy of its current lottery process applicable to the allocation of

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Exchange has satisfied this requirement.

¹² Id.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

ITPs, which the Commission previously approved, and would apply that methodology in the context of expanding its SPX trading crowd.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁴ In particular, the Commission believes that waiver of the operative delay will promote competition and efficiency by providing CBOE with the option to utilize its new lottery process to manage the expansion of the SPX trading crowd, which it anticipates allocating in the next several days. Waiving the operative delay will enable CBOE to use either this new process or the historically-utilized first in time process as it deems appropriate, and will enable CBOE to allocate the new space promptly through a fair and objective methodology. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's effect on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2008-116 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-2008-116. 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 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. SR-CBOE-2008-116 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Acting Secretary

¹⁵ 17 CFR 200.30-3(a)(12).