

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60491; File No. SR-CBOE-2009-057)

August 12, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to Market-Maker Orders

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 August 10, 2009, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 eliminate an order identification rule for Market-Maker and Specialist orders. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

Rule 6.73(d) currently provides that a Floor Broker holding an order for the account of a Market-Maker or Specialist shall verbally identify the order as such in open outcry prior to requesting a quote. The rule was originally adopted in 2002 to ensure that Market-Maker and Specialist orders are not inadvertently represented as public customer orders, which receive preferential treatment in certain instances under CBOE Rules.³

When the rule was adopted, CBOE noted that orders submitted electronically are required to contain an account origin code. An origin code identifies the type of order such that CBOE can route it to the proper location. For example, "C" orders represent public customer orders. At that time, "C" orders were eligible for routing to the Retail Automatic Execution System ("RAES"), which CBOE no longer utilizes. In addition, only "C" orders were eligible for entry into the limit order book when RAES was utilized, and public customer orders resting in the limit order book had priority over other bids and offers represented in the trading crowd at the same price. "M" orders, on the other hand, indicate the order emanates from a CBOE Market-Maker. "M" orders were not eligible for routing to RAES or for entry into the limit order book when RAES was in use and instead were routed to a crowd printer.⁴ Origin codes

³ See Securities Exchange Act Release No. 46102 (June 21, 2002), 67 FR 43692 (June 28, 2002)(SR-CBOE-2002-33)(immediately effective rule change relating to the identification of Market-Maker and Specialist orders).

⁴ When RAES was utilized, the Exchange had also determined that clearing firm and broker-dealer orders utilizing origin codes "F" and "B" (but not Market-Makers or Specialist orders) were allowed to access RAES for automatic executions, but such broker-dealer orders could not be placed in the limit order book.

also assisted, and continue to assist, CBOE and The Options Clearing Corporation in the clearing of trades.

The 2002 rule change simply extended the origin code requirement to the open outcry environment by requiring Market-Maker and Specialist orders to be verbally identified as such. The premise was that requiring the identification of the orders as Market-Maker or Specialist orders would reduce the likelihood that such orders would be inadvertently treated as public customer orders.

The Exchange is proposing to eliminate this requirement as it is superfluous and unnecessary. First, as indicated above, the requirement to verbally identify Market-Maker and Specialist orders was introduced as an added requirement beyond the order marking requirement so that such orders would not be inadvertently represented as public customer orders on the RAES trading platform. However, the preferential treatment afforded to public customer orders was system enforced through the order marking requirement and, therefore, the requirement to verbally identify such orders was superfluous and unnecessary. Second, as indicated above, the Exchange no longer utilizes the RAES trading platform for which the order identification procedure was introduced. Instead CBOE utilizes the Hybrid Trading System, which permits public customer, Market-Maker, Specialist and other types of broker-dealer orders to be routed for automatic execution and to rest in a consolidated electronic book. Public customer orders resting in the consolidated electronic book do generally continue to have priority over other bids and offers at the same price when utilizing the Hybrid Trading System, however, this priority is system enforced for electronic transactions. For open outcry transactions, members are able to distinguish public customer orders in the consolidated electronic book because they are separately displayed through a public customer limit order book. Thus, the Market-Maker and

Specialist verbal order identification requirement continues to be superfluous and unnecessary for the Hybrid Trading System. Third, the Exchange also notes that the CBOE Rules do not require the verbal identification of other order types, such as clearing firm and broker-dealer orders, in open outcry and the Exchange no longer believes it is necessary to single out and verbally identify Market-Maker and Specialist orders in open outcry either.

The Exchange notes that this rule change simply eliminates the requirement to verbally identify Market-Maker and Specialist orders in open outcry. Orders will continue to be required to contain an account origin code that identifies the type of order (e.g., an origin code of “M” is still used for Market-Maker orders).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act⁵ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, by proposing to eliminate Rule 6.73(d) and its requirement to verbally identify Market-Maker and Specialist orders, which the Exchange as [sic] determined to be superfluous and unnecessary, the Exchange believes the proposed rule change should serve to remove an unnecessary burden and simplify the administration of its rules, while also maintaining other existing procedures that would reduce the likelihood that

⁵ 15 U.S.C. 78s(b)(1).

⁶ 15 U.S.C. 78f(b).

such orders would be inadvertently treated as public customer orders.

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.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-

⁷ 15 U.S.C. 78f(b)(5).

2009-057 on the subject line.

Paper comments

- 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-2009-057. 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 the 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 Number SR-CBOE-2009-057 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.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).