

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53543; File No. SR- CBOE-2006-21)

March 23, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise Provisions of the Exchange's Crossing Rule

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 February 28, 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 CBOE. The Exchange filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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

CBOE proposes certain changes to provisions of its rule that governs the participation rights of firms crossing orders in open outcry. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 these statements may be examined at the places specified in Item IV below. 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

Paragraphs (d) and (e) of CBOE Rule 6.74 currently provide guaranteed participation rights to floor brokers in trades that are crossed in open outcry in certain circumstances. Generally, these provisions provide that if the trade takes place at the market provided by the crowd then, after all public customer orders in the book and represented in the trading crowd at the time the market was established are satisfied, the floor broker representing the order will be entitled to cross a certain percentage of the contracts remaining in the original order. The percentage could be 40% or 20%, depending upon the particular type of option. For example, transactions in equity options are generally subject to a 40% participation guarantee under paragraph (d) and broad-based index options (where the option class is not traded at an equity option trading post) are generally subject to a 20% participation guarantee under paragraph (e).

In order to clarify and simplify the crossing provisions related to the 40% and 20% participation entitlements, the Exchange is deleting the current crossing entitlement provisions in paragraphs (d) and (e) of CBOE Rule 6.74 and creating a new crossing entitlement provision (proposed new paragraph (d) of CBOE Rule 6.74), which combines aspects of current

paragraphs (d) and (e) of the current rule. The new paragraph (d) would provide a crossing entitlement for all option classes traded on the Exchange,⁵ and set forth applicable parameters that would be set by the appropriate Exchange Procedure Committee on a class-by-class basis.⁶ In addition, proposed CBOE Rule 6.74(d)(viii) would provide that the appropriate Procedure Committee would have the authority to exempt an option class from the section of the rule that provides for the crossing guarantee.⁷ For each class that is subject to the crossing entitlement provisions, the appropriate Procedure Committee would determine the following: (i) whether the

⁵ Currently, the crossing entitlements of CBOE Rule 6.74(d) and (e) apply only to trading in equity and broad-based index options. See Telephone conversation between David Doherty, Attorney, CBOE, and Jan Woo, Attorney, Division of Market Regulation, Commission, March 15, 2006 (“Telephone conversation of March 15, 2006”).

⁶ The particular open outcry trading procedures applicable to the crossing guarantee will continue to apply unchanged. Generally, a floor broker representing an order eligible for crossing must request bids and offers and make all persons in the trading crowd aware of the request. When the cross involves a facilitation of a public customer order, the floor broker must make certain disclosures on the order ticket for the public customer and must disclose all securities that are components of the public customer order before requesting bids and offers for the execution of all components of the order. Once the trading crowd has provided a quote, the floor broker is entitled to cross a certain percentage of the order after all public customer orders that were on the limit order book and represented in the trading crowd at the time the market was established have been satisfied. The current provisions describing the Designated Primary Market-Maker’s (“DPM”) guaranteed participation level (the guaranteed participation level will be a percentage that when combined with the percentage the originating firm crossed, does not exceed 40% of the order that remains after satisfying those public customer orders which trade ahead of the cross transaction) and priority of members of the trading crowd who established the market also apply unchanged under the proposed rule change. As is also provided in the existing procedures, nothing prohibits a floor broker or DPM from trading more than their applicable participation entitlements if the other members of the trading crowd do not choose to trade the remaining portion of the order. The proposed rule change also includes references to Lead Market-Makers, since that category of Exchange market participant may be entitled to a participation entitlement pursuant to CBOE Rule 8.15B.

⁷ This exemptive provision is identical to what is currently provided in subparagraph (e)(viii) of CBOE Rule 6.74 with respect to broad-based index options. Telephone conversation of March 15, 2006.

crossing guarantee applies to facilitations and/or solicitations;⁸ (ii) a crossing guarantee percentage of either 20% or 40% (after public customer orders are satisfied);⁹ and (iii) the eligible size for an order that may be subject to the guaranteed crossing entitlement, although the eligible order size may not be less than 50 contracts.¹⁰

The Exchange is also revising CBOE Rule 6.9.04 to make that provision consistent with the first paragraph of proposed CBOE Rule 6.74(d).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹¹ in general and furthers the objectives of Section 6(b)(5) of the Act¹² in particular in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

⁸ Currently, CBOE Rule 6.74(d) and Commentary .08 to CBOE Rule 6.74 provide for a crossing guarantee for both facilitation and solicitation orders in the case of equity options, and CBOE Rule 6.74(e) provides a crossing guarantee for facilitation orders only in the case of broad-based index options. Telephone conversation of March 15, 2006.

⁹ As described above, the current rules provide a 20% crossing guarantee in the case of broad-based index options and a 40% crossing guarantee in the case of equity options. Telephone conversation of March 15, 2006.

¹⁰ The proposed rule change also would establish that, in determining whether an order satisfies the eligible order size requirement, any multi-part or complex order (including a spread, straddle, combination, or ratio order (or a stock-option order or security future-option order, as defined in CBOE Rules 1.1(ii)(b) and 1.1(zz)(b), respectively) or any other complex order defined in CBOE Rule 6.53C) must contain one leg alone which is for the eligible order size or greater. Telephone conversation of March 15, 2006.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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.

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: (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)¹³ of the Act and Rule 19b-4(f)(6) thereunder.¹⁴

CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),¹⁵ and designate the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change establishes a uniform set of rules with respect to facilitation and solicitation orders for all options based on principles already approved by the Commission, while setting forth parameters by which the appropriate Exchange Procedure Committee may apply these rules flexibly on a class-by-class

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). The Exchange provided the Commission with written notice of its intention to file the proposed rule change on February 13, 2006. The Commission received the Exchange's submission, and asked the Exchange to file the instant proposed rule change, pursuant to Rule 19b-4(f)(6) under the Act.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

basis.¹⁶ Waiving the 30-day pre-operative period will allow the Exchange to implement these changes without delay.

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.

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 No. SR-CBOE-2006-21 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2006-21. 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

¹⁶ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Nancy M. Morris
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).