

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54726; File No. SR-CBOE-2006-89)

November 8, 2006

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

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 6, 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 the Exchange. The CBOE has filed this 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 which renders the proposal 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

The Exchange proposes certain changes that are intended to clarify the operation of CBOE Rule 6.74, which pertains to 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)(iii).

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, the Exchange 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. 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

CBOE Rule 6.74, “Crossing Orders,” is an open outcry crossing rule that was adopted prior to the time that the Exchange established its Hybrid Trading System (“Hybrid”), which, among other things, introduced dynamic electronic quotes and the ability for non-public customer orders to be placed in the electronic book. This proposed rule change therefore seeks to update CBOE Rule 6.74 in certain respects in order to clarify the priority of in-crowd market participants (“ICMPs”) vis-à-vis electronic trading interests. The proposed rule change also seeks to clarify the applicability of Section 11(a)(1) of the Act⁵ to crossing transactions conducted pursuant to CBOE Rule 6.74 and to update certain other provisions that have become outdated.

First, the Exchange seeks to update the provisions of CBOE Rule 6.74(d), which describes the procedures for crossing orders when a Floor Broker is seeking a participation entitlement, in order to clarify the priority of members in the trading crowd after the applicable participation entitlements have been satisfied. By way of background, in the event a Floor

⁵ 15 U.S.C. 78k(a)(1).

Broker represents an order that is of the eligible order size or greater ("original order") and is also holding a facilitation order or a solicited order, the Floor Broker may proceed under the provisions of CBOE Rule 6.74(d) to obtain a crossing participation entitlement.⁶ The CBOE Rule 6.74(d) crossing participation entitlement permits the Floor Broker to transact either 20% or 40%, as determined by the appropriate Procedure Committee, of the remainder of the original order against the facilitation or solicited order. Further, if a DPM or LMM is granted participation rights under CBOE Rule 8.87 or CBOE Rule 8.15B, respectively, CBOE Rule 6.74(d)(v) provides that the DPM or LMM participation entitlement is applied if the trade occurs at the DPM's/LMM's market, provided that the DPM/LMM participation entitlement will be limited to the number of contracts that, when combined with the percentage the Floor Broker crossed, does not exceed 40% of the original order size. After the applicable public customer orders and participation entitlements have been satisfied, CBOE Rule 6.74(d)(vi) provides that "the members of the trading crowd" are entitled to participate in the balance remaining in the order.⁷

The proposed rule change will clarify which members of the trading crowd are entitled to participate in the balance remaining in the order. Specifically, the proposed rule change provides that the remaining balance of an order will be allocated among the ICMPs who established the market. Therefore, neither electronic quotes received by the Exchange from electronic DPMs

⁶ Pursuant to CBOE Rule 6.74(d)(ii), the Floor Broker crossing entitlement takes effect after all public customer orders that were on the limit order book and then represented in the trading crowd at the time the market was established have been satisfied.

⁷ CBOE Rule 6.74(d)(vi) currently provides in relevant part that the "members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time the market was established (but not over customer orders on the book) and will maintain priority over such orders except for orders that improve upon the market."

and Remote Market-Makers (categories of CBOE market-makers that are not physically located in the trading crowd) nor broker-dealer electronic orders resting on the book would be entitled to participate in the remaining balance of the order if there is sufficient interest among the ICMPs in the trading crowd at the same price or better.

Thus, the CBOE Rule 6.74(d) priority sequence is generally such that, at the same price, public customer orders resting in the book would have first priority, then the Floor Broker to the extent of the crossing entitlement, then the DPM /LMM (to the extent of the DPM/LMM participation entitlement), and then the ICMPs. Further, nothing prohibits a Floor Broker or DPM/LMM from trading more than his percentage entitlement if the other ICMPs do not choose to trade the remaining portion of the order. To the extent there may be any further remaining balance, same-priced broker-dealer orders resting in the book and electronic quotes of market makers would have priority to trade next.

The proposed rule change also clarifies how the remaining balance of the order is allocated among the ICMPs, on which the rule is currently silent. Specifically, the proposed rule change provides that priority to trade the remaining portion of an order being crossed in open outcry shall be afforded to bids (offers) made by ICMPs in the sequence in which they are made. If bids (offers) were made at the same time, or in the event that the sequence cannot be reasonably determined, priority shall be apportioned equally among the ICMPs who established the market. In the event an ICMP declines to accept any portion of the available contracts, any remaining contracts shall be apportioned equally among the other ICMPs who established the market until all contracts have been apportioned.

The proposed rule change also seeks to adopt an introductory paragraph for CBOE Rule 6.74 that generally clarifies the priority principles applicable among ICMPs and electronic

trading interest. Specifically, the introduction will provide that, at the same price, bids and offers of ICMPs have first priority, except as is otherwise provided in the Rule with respect to public customer orders resting in the electronic book, and all other bids and offers (including bids and offers of broker-dealers in the electronic book and electronic quotes of Market-Makers) have second priority.

All transactions conducted under CBOE Rule 6.74 must be in compliance with Section 11(a) of the Act and the rules promulgated thereunder. Therefore, the introduction will also make clear that, in order to transact proprietary orders⁸ on the floor of the Exchange pursuant to the Rule, members must ensure that they qualify for an exemption from Section 11(a)(1) of the Act.

Members relying on Section 11(a)(1)(G) of the Act⁹ and Rule 11a1-1(T) thereunder (the “G” exemption)¹⁰ as an exemption must comply with the requirements of that exemption before executing a proprietary order, including the requirement to yield priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member (a “non-member”), irrespective of the size of any such bid or offer or the time when it was entered. Because CBOE’s electronic book does not distinguish between member and non-member broker-dealer orders, the introductory language also clarifies how a member relying on the “G” exemption must yield priority. Specifically, before a member that is relying on the “G” exemption can execute a proprietary order, the member must first yield priority to all same-priced public customer orders and broker-dealer orders (whether non-member or member)

⁸ For purposes of the Rule, a “proprietary order” will mean an order for a member’s own account, the account of an associated person, or an account with respect to which the member or an associated person thereof exercises investment discretion.

⁹ 15 U.S.C. 78k(a)(1)(G).

¹⁰ 17 CFR 240.11a1-1(T).

resting in the electronic book, as well as any other bids and offers that would otherwise have priority over those broker-dealer orders under CBOE Rule 6.74.

For example, assume a Floor Broker is relying on the “G” exemption and asserting a participation entitlement when attempting to cross an order with a firm proprietary order pursuant to CBOE Rule 6.74(d). The Floor Broker must yield priority to any same-priced public customer orders and broker-dealer orders resting in the electronic book, as well as any DPM/LMM and other ICMPs that would otherwise have priority over those broker-dealer orders. In such a scenario, the CBOE Rule 6.74(d) priority sequence described above is modified so that, at the same price, public customer orders resting in the book would have first priority, then the DPM /LMM (to the extent of the DPM/LMM participation entitlement), then the ICMPs (to the extent each such participant also qualifies for an exemption from Section 11(a)(1) of the Act but is not relying on a “G” exemption), then broker dealer orders resting in the book, and then the Floor Broker’s proprietary order (along with any other ICMPs also relying on the “G” exemption). As in CBOE Rule 6.74(d)(v), the Floor Broker’s percentage entitlement to the remaining contracts, when combined with the DPM/LMM guaranteed participation, may not exceed 40% of the order. However, provided the “G” exemption requirements are satisfied, nothing prohibits a Floor Broker or DPM/LMM from trading more than their applicable percentage entitlement if other ICMPs do not chose to trade the remaining portion of the order. To the extent there may be any further remaining balance, same-priced electronic quotes of market makers would have priority to trade next.

Finally, the Exchange proposes various other changes to CBOE Rule 6.74, including conforming changes to reference “ICMPs” throughout the text of the Rule. The Exchange also proposes changes to the text of Interpretation and Policy .08 of the Rule to clarify that CBOE

Rule 6.74(d) supercedes the priority provisions of paragraph (d) of CBOE Rule 6.9, “Solicited Transactions,” with respect to both facilitations and solicitations.¹¹ The Exchange also proposes to remove an outdated reference to a “Board Broker,” a term which no longer is utilized by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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.

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

The Exchange has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date

¹¹ The text of CBOE Rule 6.74, Interpretation and Policy .08 currently refers to “solicited orders,” which are defined in CBOE Rule 6.9, Interpretation and Policy .01 to include both facilitation orders and orders resulting from solicitations.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b-4(f)(6)(iii),¹⁴ the CBOE provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

Pursuant to Rule 19b-4(f)(6)(iii) under the Act, a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal will clarify the operation of CBOE Rule 6.74 and will clarify how Floor Brokers may comply with the requirements of Section 11(a) under the Act.¹⁷ For these reasons, the Commission designates that the proposed rule change become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2006-89 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-CBOE-2006-89. 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. 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 No. SR-CBOE-2006-89 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Nancy M. Morris
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).