

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55263; File No. SR-CBOE-2005-111)

February 9, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Multiple Representation Exception Procedures

On December 16, 2005, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt additional exceptions to the prohibition on multiple representation by Market Makers contained in CBOE Rule 6.55.<sup>3</sup> On October 17, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on December 6, 2006.<sup>4</sup> The Commission received no comments regarding the proposal.

Rule 6.55 is intended to ensure that Market Makers are not disproportionately represented in the trading crowd. The general prohibition of Rule 6.55 provides, in relevant part, that no Market-Maker shall enter or be present in a trading crowd while a Floor Broker present in the trading crowd is holding an order on behalf of the Market Maker’s individual account or an order initiated by the Market-Maker for an account in which the Market-Maker has an interest.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The proposed rule change would also make revisions to certain procedures in Rule 6.55 that have become outdated.

<sup>4</sup> See Securities Exchange Act Release No. 54823 (November 28, 2006), 71 FR 70810.

<sup>5</sup> Rule 6.55 also provides that regulatory circulars concerning joint accounts should be consulted in connection with procedures governing the simultaneous presence in the

The proposed rule change would add to the Rule's current exceptions by permitting a Market-Maker to enter or be present in a trading crowd in which a Floor Broker is present who holds either a solicited order on behalf of the Market Maker's individual or joint account or a solicited order initiated by the Market-Maker for an account in which the Market Maker has an interest – provided that the Market-Maker advises the Floor Broker of his or her intention to enter or be present in the trading crowd and also refrains from trading in-person on the same trade as the original order.<sup>6</sup> The proposed rule change would further permit a Market-Maker to enter or be present in a trading crowd in which a Floor Broker is present who holds an order on behalf of the Market Maker's individual account or an order the Market Maker initiated for an account in which the Market Maker has an interest (i.e., even when that order is not a solicited order) – provided that the Market-Maker advises the Floor Broker of his or her intention to enter or be present in the trading crowd and also refrains from trading in-person on the same trade as the order being represented by the Floor Broker.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of

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trading crowd of participants in and orders for the same joint account. These circulars, among other things, extend the prohibition against multiple representation to cover joint account activity in certain circumstances.

<sup>6</sup> In the case of joint accounts, it would be the responsibility of the Market-Maker to ascertain whether solicited orders for his or her joint account had already been entered with a Floor Broker in a trading crowd prior to his or her trading for the joint account in-person.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

trade, 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.<sup>8</sup>

The Commission notes that, under each of the proposed new exceptions, the Market Maker would be required to make the Floor Broker aware of his or her intention to enter or be present in the trading crowd, and the Market Maker would also be required to refrain from trading in-person on the same trade as the relevant order being represented by the Floor Broker. The Commission believes that these provisions are appropriately designed to prevent a Market-Maker from being disproportionately represented in the trading crowd, consistent with the original purpose of the prohibition in CBOE Rule 6.55. The Commission, therefore, believes that the proposed rule change is consistent with the Act.

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<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2005-111), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).