

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55275; File No. SR-CBOE-2006-94)

February 12, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Off-Floor DPMs

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 13, 2006, the Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on January 18, 2007. 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 to amend CBOE rules to allow a Designated Primary Marker-Maker (“DPM”) to operate remotely away from CBOE’s trading floor. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com>), 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 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 those statements may be examined at the places

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its rules to allow a DPM to operate remotely away from CBOE's trading floor. DPMs are member organizations that function in option classes allocated to them as a Market-Maker, and also are subject to the obligations under Rule 8.85 or as otherwise provided in CBOE's Rules. Currently, all DPMs operate on CBOE's trading floor. However, some member organizations have expressed an interest in acting as a DPM remotely away from CBOE's trading floor. As discussed below, the proposed rule change is intended to provide DPMs with the flexibility to operate on CBOE's trading floor ("On-Floor DPM") or remotely away from CBOE's trading floor ("Off-Floor DPM"). A DPM would only be permitted to operate as an Off-Floor DPM in equity option classes traded on the Hybrid Trading System.

CBOE proposes to amend Rule 8.83 to provide that in selecting an applicant for approval as a DPM, the appropriate exchange committee may place one or more conditions on the approval, including, but not limited to, whether the DPM will operate on-floor or off-floor. Additionally, CBOE proposes to amend Rule 8.83 to provide that an On-Floor DPM can request that the appropriate Exchange committee authorize it to operate as an Off-Floor DPM in one or more equity option classes traded on the Hybrid Trading System. The appropriate Exchange committee will consider the factors specified in Rule 8.83(b) in determining whether to permit an On-Floor DPM to operate as an Off-Floor DPM. In the event a DPM is approved to operate as an Off-Floor DPM, Rule 8.83 provides that the Off-

Floor DPM can have a DPM Designee trade in open outcry in the option classes allocated to the Off-Floor DPM, but the Off-Floor DPM shall not receive a participation entitlement under Rule 8.87 with respect to orders represented in open outcry. CBOE also proposes to amend Rule 6.45A(a)(C) and Rule 6.74 to make clear that the DPM participation entitlement is only applicable to an On-Floor DPM.

As provided in new Interpretation .01 to Rule 8.83, if an Off-Floor DPM wishes to operate as an On-Floor DPM, the Off-Floor DPM can request that the appropriate Exchange Committee authorize it to do so. In making a determination pursuant to this Interpretation, the appropriate Exchange committee would evaluate whether the change is in the best interests of the Exchange, and the committee may consider any information that it believes will be of assistance to it. Factors to be considered may include, but are not limited to, any one or more of the following: performance, operational capacity of the Exchange or the DPM, efficiency, number and experience of personnel of the DPM who will be performing functions related to the trading of the applicable securities, number of securities involved, number of Market-Makers affected, and trading volume of the securities.

In connection with this rule change, CBOE proposes to amend certain DPM obligations contained in Rule 8.85. In particular, CBOE proposes to amend the obligation contained in subparagraph (a)(iv) which currently provides that the DPM must assure that the number of DPM Designees and support personnel continuously present at the trading station throughout every business day is not less than the minimum required by the appropriate Exchange committee. CBOE proposes to amend subparagraph (a)(iv) to state that an Off-Floor DPM similarly shall assure that the number of DPM Designees and support personnel continuously overseeing the DPM's activities is not less than the minimum required by the

appropriate Exchange committee. Additionally, an Off-Floor DPM shall provide members with telephone access to a DPM Designee at all times during market hours for purposes of resolving problems involving trading on the Exchange.

CBOE also proposes to amend the provision in subparagraph (a)(v) of Rule 8.85 that states a DPM shall trade in all securities allocated to the DPM only in the capacity of a DPM and not in any other capacity. CBOE proposes to allow, as part of an existing pilot program applicable to e-DPMs,<sup>3</sup> an Off-Floor DPM to have not more than one Market-Maker affiliated with the Off-Floor DPM trade on CBOE's trading floor in any specific option class allocated to the Off-Floor DPM, provided such Market-Maker is trading on a separate membership.<sup>4</sup> The affiliated Market-Maker would also have to comply with the "Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs", set forth in Rule 8.91. (Absent the pilot program, an Off-Floor DPM may not allow any Market-Makers affiliated with the Off-Floor DPM to trade on CBOE's trading floor in any class allocated to the Off-Floor DPM.) If the Off-Floor DPM has an affiliated Market-Maker trade on CBOE's trading floor in any specific option class allocated to the Off-Floor DPM pursuant to the pilot program, Rule 8.85(a)(v) provides that the Off-Floor DPM can not also have a DPM Designee trading in open outcry in the option classes allocated to the Off-Floor DPM.

Finally, CBOE proposes to amend Interpretation .02 of Rule 3.8 to allow an Off-Floor DPM to appoint one individual to be the nominee for all memberships utilized by the organization in an Off-Floor DPM capacity. Interpretation .02 of Rule 3.8 currently provides

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<sup>3</sup> See CBOE Rule 8.93(vii). The Pilot Program is scheduled to expire on March 14, 2007.

<sup>4</sup> CBOE proposes to make a corresponding change to the "Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs." See Guidelines, Paragraph (b)(viii).

that a member organization can appoint one individual to be the nominee for all memberships utilized by the organization in an RMM capacity or an e-DPM capacity. This is an exception to the general requirement of Rule 3.8(a)(ii) which provides that “if a member organization is the owner or lessee of more than one membership, the organization must designate a different individual to be the nominee for each of the memberships.”

## 2. Statutory Basis

CBOE 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.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to 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

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

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

<sup>6</sup> 15 U.S.C. 78(f)(b)(5).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2006-94 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 Number SR-CBOE-2006-94. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2006-94 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.<sup>7</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).