

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55531; File No. SR-CBOE-2006-94)

March 26, 2007

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

I. Introduction

On November 13, 2006, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to allow DPMs to operate off-floor. The Exchange filed Amendment No. 1 to the proposed rule change on January 18, 2007. The proposed rule change was published for comment in the Federal Register on February 20, 2007.³ The Commission received no comments on the proposal.

II. Description of the Proposal

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 Market-Makers, 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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55275 (February 12, 2007), 72 FR 7782.

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 subparagraph (a)(v) of Rule 8.85, which states that 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,⁴ 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

⁴ See CBOE Rule 8.93(vii).

membership.⁵ 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 Marker-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 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.”

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements

⁵ 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).

⁶ The Commission has considered the amended proposed rule change’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

of Section 6 of the Act.⁷ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁸ in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest.

In addition, the Commission believes that a Market Maker must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify receiving market maker margin. The Commission believes that CBOE's rules impose such affirmative obligations on DPMs that choose to operate remotely and notes that, under the proposal, a DPM acting from a remote location would still be required to meet the obligations of a DPM set forth in CBOE Rule 8.85.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-CBOE-2006-94), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).