

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55894; File No. SR-CBOE-2007-57)

June 11, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt an Interpretation to CBOE Rule 8.95

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> notice is hereby given that on May 31, 2007, 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, II, and III below, which Items have been substantially prepared by the CBOE. The Exchange has designated this proposal as one constituting a stated interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> 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

CBOE proposes to adopt an interpretation to CBOE Rule 8.95 clarifying that in the event an existing Designated Primary Market-Maker (“DPM”) organization is authorized to act as an Off-Floor DPM in one or more option classes, such authorization will be considered a reallocation of securities pursuant to CBOE Rule 8.95. The text of the proposed rule change is

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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> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

available on CBOE's web site ([www.cboe.com/Legal](http://www.cboe.com/Legal)), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

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 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. The 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

The Exchange proposes to adopt an interpretation to CBOE Rule 8.95 clarifying that in the event an existing DPM organization is authorized to act as an Off-Floor DPM in one or more option classes, such authorization will be considered a reallocation of securities pursuant to CBOE Rule 8.95. In adopting this interpretation, the appropriate Exchange committee will retain jurisdiction for the first 12 months following the reallocation of securities to review the Off-Floor DPM's market performance commitments that were made in connection with the appropriate Exchange committee's authorization to permit the DPM organization to act as an Off-Floor DPM.

Pursuant to CBOE Rule 8.83(g), an On-Floor DPM may 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.<sup>5</sup> If an On-Floor DPM is approved to act as an Off-Floor DPM, CBOE proposes to adopt an interpretation to CBOE Rule 8.95 clarifying that the option classes in which the On-Floor DPM is authorized to act as an Off-Floor DPM are considered a reallocation of securities.

Consistent with the way CBOE Rule 8.95(c) is currently applied to allocations and reallocations of securities, the appropriate Exchange committee will then have the flexibility during the first 12 months following the reallocation of securities to the Off-Floor DPM to conduct a review at any time during that first 12 months to ensure that the Off-Floor DPM is adhering to any market performance commitments made by the DPM organization in connection with being authorized to act as an Off-Floor DPM. If the Off-Floor DPM is not adhering to the market performance commitments that it made in connection with being authorized to act as an Off-Floor DPM, then the appropriate Exchange committee may remove the allocated security from the Off-Floor DPM and reallocate the security pursuant to CBOE Rule 8.95(c). This in turn gives Off-Floor DPMs incentive to abide by these commitments.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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

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<sup>5</sup> See Securities Exchange Act Release No. 34-55531 (March 26, 2007) 72 FR 15736 (April 2, 2007) (Order approving SR-CBOE-2006-94).

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

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

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>8</sup> and Rule 19b-4(f)(1) thereunder,<sup>9</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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.<sup>10</sup>

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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

<sup>10</sup> See 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2007-57 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-2007-57. 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 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-2007-57 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>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).