

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56814; File No. SR-CBOE-2007-87)

November 19, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, and Amendment No. 1 Thereto, to Amend the Quoting Requirements Applicable to the Hybrid Opening System

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 July 25, 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 Exchange. On November 19, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rule pertaining to the Hybrid Opening System (“HOSS”) as well as related rules pertaining to the obligations of designated primary market-makers (“DPMs”), electronic designated primary market-makers (“e-DPMs”) and lead market-makers (“LMMs”) during opening rotations. The text of the proposed rule change is available at the Exchange, on the Exchange’s Web site (<http://www.cboe.org>), and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to amend its HOSS procedures contained in CBOE Rule 6.2B. HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. Previously, for each option class approved for trading, HOSS had been programmed to open an option series only if the DPM or LMM, as applicable, for the particular option class submitted a quote that complies with the legal quote width requirements of paragraph (b)(iv) to CBOE Rule 8.7, Obligations of Market-Makers. The HOSS procedures were revised in 2005 and, currently, HOSS is programmed to open an option series as long as any market maker,³ not just the DPM or LMM, has submitted an opening quote that complies with the legal width quote requirements of CBOE Rule 8.7(b)(iv).⁴ However, even though the procedures were changed to permit HOSS to automatically open a series without a DPM's or LMM's quote, DPMs (as well

³ This could include a quote from a DPM, e-DPM, LMM, Market-Maker or Remote Market-Maker.

⁴ See Securities Exchange Act Release No. 52234 (August 10, 2005), 70 FR 48214 (August 16, 2005) (SR-CBOE-2005-40). Other factors must also be satisfied for HOSS to open an options series. For example, the opening price for the series must be within an acceptable range and the opening trade cannot create a market order imbalance. See, e.g., CBOE Rule 6.2B(e)(ii) – (iii).

as e-DPMs) or LMMs still remain obligated under CBOE rules to timely submit opening quotes.⁵ The proposed rule change is designed to give some relief to DPMs, e-DPMs and LMMs from this opening quote requirement. Because HOSS is programmed to automatically open based on any market-maker's quote, the Exchange does not believe that DPMs, e-DPMs and LMMs should be viewed as violating the opening quote requirement when they inadvertently miss the opening simply because another market-maker entered a quote before the DPM, e-DPM or LMM.

In an effort to provide more flexibility to ensure that all options series are opening in a fair and orderly manner, the Exchange is proposing to modify the HOSS procedures and related opening quote obligations of DPMs, e-DPMs and LMMs to allow the parameters to be configured so that an option series will open: (i) if at least one market maker has submitted an opening quote (which is how HOSS currently operates) or (ii) only if a DPM or LMM, as applicable, has submitted an opening quote (which is how HOSS previously operated). Determinations on the particular configuration would be made on a class-by-class basis by the appropriate Exchange Procedure Committee and announced to the membership via Regulatory Circular. There will be no set factors for making the determinations; it will simply be the method the appropriate Exchange Procedure Committee thinks would work best to achieve a competitive, efficient and orderly opening in the particular class. The appropriate Exchange Procedure Committee might consider such things as trading in the underlying or related products,

⁵ Currently, DPMs, e-DPMs and LMMs are required to enter opening quotes in accordance with CBOE Rule 6.2B in 100% of the series of each appointed class; whereas, other Market-Makers and Remote Market-Makers are permitted, but not obligated, to enter opening quotes in accordance with CBOE Rule 6.2B. See existing CBOE Rules 6.2B, 8.15A, Lead Market-Makers in Hybrid Classes (subparagraph (b)(iv) of this rule has been interpreted by the Exchange to require an LMM to enter opening quotes in 100% of the series of each appointed class), 8.85, DPM Obligations, 8.93, e-DPM Obligations.

trading in the option on competing exchanges, how effectively opens have occurred in the past, liquidity and/or other factors. For example, if the Exchange desires to increase liquidity in a particular class on the open, the appropriate Exchange Procedure Committee might determine to configure HOSS so that the DPM's quote must be present to open in order to ensure that there is sufficient liquidity available.

The Exchange is also proposing that, in the event HOSS is configured to open a series based on any market maker's quote, the DPM and any e-DPMs appointed to the class or, as applicable, the LMMs appointed to the class, would be obligated to ensure that a trading rotation is initiated promptly following the opening of the underlying security (or promptly after 8:30 a.m. (Central Time) in an index class) in accordance with CBOE Rule 6.2B in 100% of the series of each allocated class by entering opening quotes as necessary. In other words, if another market maker has already entered an opening quote in a particular series, it would not be necessary for the DPM and e-DPM, or LMM, to enter an opening quote for HOSS to automatically open the series. However, if no other market maker has entered an opening quote, the DPM and e-DPM, or LMM, would be responsible for ensuring that an opening quote is promptly entered so that HOSS can automatically open the series. This obligation to ensure that an opening rotation is conducted promptly in an allocated class by entering opening quotes only as necessary will be in lieu of the existing obligation, which requires DPMs, e-DPMs and LMMs to enter opening quotes in 100% of the series of each allocated class.⁶ When HOSS is programmed to automatically open a series with any market maker's quote, the Exchange does

⁶ See supra note 5.

not believe it is necessary for the maintenance of fair and orderly markets to always require DPMs, e-DPMs and LMMs to enter opening quotes.⁷

2. Statutory Basis

The Exchange states that, by allowing for more flexibility in the manner in which HOSS is programmed to conduct an opening rotation, it will enhance its ability to conduct fair and orderly openings. As such, CBOE believes this proposed rule change is consistent with Section 6(b) of the Act⁸ in general and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to 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

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 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

⁷ Although not obligated, DPMs, e-DPMs and LMMs would still be permitted to enter opening quotes even if another market maker has already entered an opening quote.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization 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 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-2007-87 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-2007-87. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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 Number SR-CBOE-2007-87 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).