

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60130; File No. SR-CBOE-2009-038)

June 17, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Related to the Complex Order Book

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 June 16, 2009, 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 prepared by the CBOE. 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

The CBOE proposes to amend Rule 6.53C, “Complex Orders on the Hybrid System,” with respect to order and quote types that may be entered to trade against orders in the complex order book (“COB”) system. The text of the proposed rule change is available on the Exchange’s Web site at (<http://www.cboe.org/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 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

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

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

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

Under Rule 6.53C(c)(1), the Exchange determines which classes and which complex order origin types (i.e., non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange) are eligible for entry into the COB and whether such complex orders can route directly to the COB and/or from PAR to the COB. Complex orders not eligible to route to COB (either directly or from PAR to COB) route to PAR. In addition, Rule 6.53C(c)(ii)(3) provides in relevant part that market participants, as defined in Rule 6.45A or 6.45B, may submit orders or quotes to trade against orders resting in the COB.

Depending on the particular option class, orders and quotes submitted by market participants may or may not be eligible to rest in COB. For example, the Exchange may determine for a particular option class that only non-broker-dealer public customer and broker-dealers that are not Market-Makers or specialists on an options exchange are eligible to rest in COB. For that class, Market-Maker orders and quotes would not be eligible to rest in COB, but may be submitted to trade against orders resting in COB pursuant to subparagraph (c)(ii)(3).

Currently, market participants whose orders and quotes are not eligible to rest in COB but who wish to trade against orders resting in the COB may enter limit orders using an immediate-or-cancel ("IOC") contingency to avoid resting in COB. Alternatively, if an IOC contingency is not used, a market participant needs to cancel any remaining volume for a limit order or quote after the limit order or quote trades against an order resting in COB.

The Exchange now proposes to amend Rule 6.53C(c)(ii)(3) to provide that market participants entering orders or quotes that are not eligible to rest in the COB may only enter IOC orders, and such other order or quote types as the Exchange may determine on a class-by-class basis, to trade against orders resting in the COB. For orders types that are not eligible to rest in or trade against the COB, the orders will be automatically routed to PAR or at the order entry firm's discretion to the order entry firm's booth. For quotes types that are not eligible to rest in or trade against the COB, the quotes will be automatically cancelled. In this regard, the Exchange notes that only Market-Makers may enter quotes. The Exchange also notes that, should the Exchange determine that Market-Maker quotes are not eligible to rest in or trade against the COB, Market-Makers would at a minimum be permitted to submit IOC orders to trade against the COB.

Finally, the Exchange is also proposing changes to the text of Rule 6.53C(c)(i) to clarify that complex orders not eligible to rest in or trade against the COB will route to PAR or at the order entry firm's discretion to the order entry firm's booth. Currently the rule text in this subparagraph only references that such orders will route to PAR.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>4</sup> in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

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<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the addition of the new functionality further automates the handling of complex orders and quotes in accordance with the requirements of Rule 6.53C.

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 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 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 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-2009-038 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2009-038. 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 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-2009-038 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.<sup>5</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).