

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60488; File No. SR-CBOE-2009-037)

August 12, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, to Amend Its Minor Rule Violation Plan

On June 4, 2009, 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 amending CBOE Rule 17.50 (Minor Rule Plan) (“MRP”) to incorporate additional violations into the MRP, increase the sanctions for certain violations, to make other minor changes, and to make changes to the trading and decorum violations. On June 17, 2009, the Exchange filed Amendment No. 1 to the proposed rule change to make non-substantive, technical edits to the rule text submitted as Exhibit 5 to SR-CBOE-2009-037. On June 23, 2009, the Exchange filed Amendment No. 2 to the proposed rule change making corrections to the description of the changes submitted in Amendment No. 1. The proposed rule change, as amended, was published for comment in the Federal Register on July 6, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The Exchange has proposed to make additional rules subject to punishment under its the MRP. These rules relate to: (1) exercise limits (Rule 4.12); (2) trading in restricted classes (Rule 5.4); (3) linkage violations (Rules 6.83 and 6.84); (4) market maker quoting obligations (Rules 8.7, 8.15A, 8.85, and 8.93); (5) failure to accurately report position and account information (Rule 4.13); (6) failure to designate a person or persons responsible for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

implementing and monitoring a member's anti-money laundering compliance program (Rule 4.20); (7) failure to provide prior capital withdrawal notice (Rule 15c3-1(e) under the Act); and (8) failure to provide post capital withdrawal notice (Rule 15c3-1(e) under the Act). The Exchange believes that it will be able to carry out its regulatory responsibility more quickly and efficiently by incorporating these violations into its MRP.

The Exchange has also proposed to increase the fine levels for certain violations.⁴ The Exchange believes that the current fine levels for such violations are too low, given the serious nature of such offenses, and that the proposed increases are necessary to be an effective deterrent against future violations and a just penalty for such violations. Furthermore, the Exchange has proposed to extend the surveillance period for many of the violations to a 24-month rolling period from a 12-month period.⁵ The Exchange believes that increasing the surveillance period

³ Securities Exchange Act Release No. 60177 (June 25, 2009), 74 FR 32015.

⁴ The proposed increased fines would apply to the following violations: (1) failure to respond in a timely manner to a request for automated submission of trade data ("Blue Sheets") (Rule 15.7); (2) failure of a floor broker or market maker to honor the firm quote requirements (Rule 8.51), to honor the priority of marketable customer orders maintained in the Customer Limit Order Book (Rule 6.45), and to use due diligence in the execution of orders for which the floor member maintains an agency obligation (Rule 6.73); and (3) violations of exercise and exercise advice rules for American-style, cash-settled index options (Rule 11.1, Interpretation and Policy .03).

⁵ The violations that will have a 24-month rolling period are: (1) violation of exercise and position limits (Rule 4.11 and 4.12); (2) failure to respond in a timely manner to a request for automated submission of trade data ("Blue Sheets") (Rule 15.7); (3) failure of a floor broker or market maker to honor the firm quote requirements (Rule 8.51), to honor the priority of marketable customer orders maintained in the Customer Limit Order Book (Rule 6.45), and to use due diligence in the execution of orders for which the floor member maintains an agency obligation (Rule 6.73); (4) failure to submit trade data on trade date (Rule 6.51); (5) violations of exercise and exercise advice rules for American-style, cash-settled index options (Rule 11.1, Interpretation and Policy .03); (6) communications to the Exchange or the clearing corporation (Rule 4.22); (7) trading in restricted classes (Rule 5.4); (8) linkage violations (Rules 6.83 and 6.84); (9) failure to meet Exchange quoting obligations (Rules 8.7, 8.15A, 8.85, and 8.93); (10) failure to accurately report position and account information (Rule 4.13); (11) failure to provide prior capital withdrawal notice (Rule 15c3-1(e) under the Act); (12) failure to provide

will serve as an effective deterrent to future violative conduct. The Exchange also proposed a few other technical corrections to its MRP.

The Exchange proposed to establish a rolling 24-month look-back period for all of their trading and decorum violation offenses. In addition, the Exchange proposed to establish fixed fine levels for Class A and Class B Offenses.⁶ For Class A Offenses, CBOE will now assess a fine of \$1,000 for the first violation, \$2,500 for the second violation, and \$5,000 for the third violation. The Exchange is also proposing to delete the reference to “Subsequent Offenses” for Class A Offenses.⁷ For Class B Offenses, CBOE is proposing to assess a fine of \$250 for the first offense, \$500 for the second offense, \$1,000 for the third offense, and \$2,500 for any subsequent offenses.⁸ The Exchange proposes to change the classification of a market maker failing to respond to a request for a market by an Order Book Official or a PAR Official from a Class B Offense to a Class A Offense due to the nature of this violation. The Exchange is also proposing to remove obsolete or duplicative violations from the list of Class A and Class B Offenses.⁹

post capital withdrawal notice (Rule 15c3-1(e) under the Act); and (13) failure to designate a person or persons responsible for implementing and monitoring a member’s anti-money laundering compliance program (Rule 4.20).

⁶ Class A Offenses are considered more serious than Class B Offenses and therefore carry a heavier penalty. Class A Offenses include unbusinesslike conduct, harassment, and property damage. Class B Offenses include abusive language, dress code violations, and failure to display I.D.

⁷ The previous fine levels for Class A Offenses were: \$500 to \$1,500 for the first violation, \$1,000 to \$3,000 for the second violation, \$2,000 to \$5,000 for the third violation, and \$3,500 to \$5,000 for subsequent offenses.

⁸ The previous fine levels for Class B Offenses were: \$100 to \$500 for the first offense, \$500 to \$1,000 for the second offense, \$1,000 for the third offense, and \$2,500 for subsequent offenses.

⁹ The Exchange is proposing to remove ten Class A and Class B Violations. They are: (i) quote width violations; (ii) violations of Rule 8.51 (Firm Quote); (iii) enabling/assisting a suspended member or associated person to gain improper access to

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,¹¹ which requires that the rules of an exchange be designed to, among other things, protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,¹² which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Furthermore, the Commission believes that the proposed changes to the MRP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. Therefore, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹³ which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with CBOE rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory

the floor; (iv) gaining/enabling improper access to the floor; (v) effecting or attempting to effect a transaction with no public outcry; (vi) improper use of the runners' aisle; (vii) trading in the aisle; (viii) impermissible use of member phones; (ix) returning late or failing to return a visitor badge; and (x) DPM failure to activate or deactivate RAES.

¹⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(1) and 78f(b)(6).

¹³ 17 CFR 240.19d-1(c)(2).

organization's rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that CBOE will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRP or whether a violation requires formal disciplinary action under CBOE Rules 17.1-17.14.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁴ and Rule

¹⁴ 15 U.S.C. 78s(b)(2).

19d-1(c)(2) under the Act,¹⁵ that the proposed rule change (SR-CBOE-2009-037), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 240.19d-1(c)(2).

¹⁶ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).