

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61241; File No. SR-CBOE-2009-100)

December 24, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify CBSX Rule 51.8 to Add Pegged Cross Orders, to Add an Interpretation Regarding Pricing of Cross Orders, and to Add Greater Flexibility to Intermarket Sweep Orders

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 December 23, 2009, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Exchange proposes to modify CBSX Rule 51.8 to add a new order-type, to add an interpretation regarding CBSX pricing of cross orders, and to add greater flexibility to the CBSX intermarket sweep order process. The text of the proposed rule change is available on the Exchange’s Web site ([www.cboe.org/Legal](http://www.cboe.org/Legal)), on the Commission’s Web site ([www.sec.gov](http://www.sec.gov)), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

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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)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The filing proposes to make three changes to CBSX Rule 51.8. First, the proposal would allow users the ability to have any unexecuted balance of an intermarket sweep order (ISO) be booked and displayed. Currently, any unexecuted balance is cancelled. Thus, if the NBBO is 20 – 20.04 (500 x 100) and CBSX represents the best offer, an ISO (that is not labeled as immediate or cancel) to buy 200 shares would get filled on 100 shares at 20.04 and the balance would book as a 20.04 bid for 100 shares.

Second, the filing proposes to adopt a “Pegged Cross Order”. This order type would allow users to send both sides of a cross with an execution price that is pegged to the national best offer or national best bid. In fast moving markets this gives users greater certainty in executing crosses while ensuring that such executions honor Protected Quotations. Pegged Cross orders are entered with a penny or subpenny amount higher (lower) than the national best bid (offer). By way of example, if the NBBO is 20 – 20.04 and a 7000 share Pegged Cross order priced at the bid plus .01 is received, CBSX will execute the 7000 share cross at 20.01.

If, however, a Pegged Cross is priced in a way that would cause a trade-through of a

Protected Quotation, then the system will re-price the cross to a permissible trade price (i.e. the nearest price to the originally requested price that would not cause a trade-through and that would not conflict with the priority provisions of CBSX Rule 52.11.<sup>5</sup> For example, if the NBBO is 20 – 20.04 and a 7000 share Pegged Cross order priced at the bid plus .05 is received while the CBSX offer is 20.04 for 100 shares, CBSX will execute the 7000 share cross at 20.04. If the cross were only for 2000 shares, CBSX would effect the cross at 20.03 because it could not establish priority at 20.04 pursuant to Rule 52.11.

In addition, if a Pegged Cross is received when the national best offer is crossed with the national best bid, the system will cancel the order. If a Pegged Cross is received when the national best bid is locked with the national best offer, the system will attempt to execute the cross at the lock price provided such execution would not conflict with the priority provisions of Rule 52.11.

The last change proposed in this filing is to adopt language substantially similar to a provision contained in Chicago Stock Exchange Article XX, Rule 4.a.(7)(b) which allows for cross transactions to be priced in subpennies. The proposed provision, which would be contained in an interpretation to CBSX Rule 51.8 would allow crosses to be priced in increments as small as 0.0001 provided the execution is more than \$0.01 better than the prevailing BBO unless the cross would already be allowed priority at the BBO pursuant to Rule 52.11.

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<sup>5</sup> CBSX Rule 52.11 provides that a cross can only establish priority at the disseminated CBSX bid/offer if it (i) is for at least 5000 shares, (ii) is for a principal amount of at least \$100,000, and (iii) is greater in size than any single public customer order at the proposed cross price.

## 2. Statutory Basis

The Exchange believes the proposed rule change 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, by offering users an enhanced price improvement features and greater control over order routing, it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system. Further, the filing is consistent with the Exchange's priority principles in that it complies with Exchange Rule 52.11, and the filing is consistent with existing exemption<sup>8</sup> to the subpenny restrictions of SEC rule 612 in that any subpenny executions effected pursuant to the proposal will occur at least one penny better than any resting customer interest in the CBSX book that has priority order a cross pursuant to CBSX Rule 52.11.

### 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

The Exchange neither solicited nor received comments on the proposal.

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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if

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

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

<sup>8</sup> See Exchange Act Release No. 34-54714 (November 6, 2006), 71 FR 66352 (November 14, 2006).

consistent with the protection of investors and the public interest,<sup>9</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has requested the Commission to waive the 30-day operative delay. The Commission hereby grants such request and believes that such action is consistent with the protection of investors and the public interest.<sup>12</sup> The proposed changes to adopt the pegged cross order type and the interpretation regarding sub-penny pricing of cross orders are similar to rules of other national securities exchanges.<sup>13</sup>

At any time within 60 days of the filing of such 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.

#### 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:

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<sup>9</sup> In addition, Rule 19b-4(f)(6) requires the Exchange to provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the pre-filing requirement in this case.

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> See, e.g., NYSE Arca Equities Rule 7.31(cc) (Pegged Order); ISE Stock Exchange Trading Rule 2104(i) (Pegged Orders); Chicago Stock Exchange Article 20 Rule 4(a)(7)(b) (sub-penny provision).

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-2009-100 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-2009-100. 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-2009-100 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>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).