

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52100; File No. SR-CBOE-2005-48)

July 21, 2005

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Amend Rule 8.3A Relating to Class Quoting Limits

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 June 17, 2005, 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. On July 18, 2005, the CBOE filed Amendment No. 1 to the proposed rule change.³ The CBOE has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,⁴ and Rule 19b-4(f)(1) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made non-substantive changes to the text of proposed CBOE Rule 8.3A.03 to clarify that Market Makers who do not quote electronically in an option class will not count towards the CQL for such option class. The effective date of the original proposed rule change is June 17, 2005, and the effective date of Amendment No. 1 is July 18, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers such period to commence on July 18, 2005, the date on which the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁴ 15 U.S.C. 78s(b)(3)(A)(i).

⁵ 17 CFR 240.19b-4(f)(1).

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

The CBOE proposes to amend CBOE Rule 8.3A pertaining to Class Quoting Limits ("CQL"). The text of the proposed rule change is available on the Exchange's Internet Web site (<http://www.cboe.com>), at the Exchange'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 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

CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per Product, establishes the upper limit, or CQL, on the number of members that may quote electronically in a particular product traded on the CBOE's Hybrid Trading System and Hybrid 2.0 Platform.⁶ The methodology for determining which members may submit electronic quotations in a product is governed by paragraphs (a) through (c) of CBOE Rule 8.3A.

The purpose of this proposed rule change is to amend CBOE Rule 8.3A in order to expressly note CBOE's interpretation that a Market-Maker, who holds an appointment pursuant

⁶ See CBOE Rule 8.3A.01. See also Securities Exchange Act Release No. 51429 (March 24, 2005), 70 FR 16536 (March 31, 2005) (SR-CBOE-2004-58).

to CBOE Rule 8.3 in an option class traded on the Hybrid Trading System or the Hybrid 2.0 Platform but does not quote electronically in that option class under the provisions of CBOE Rule 8.7(d)(i), does not count towards the CQL in that option class.

Pursuant to CBOE Rule 8.3, a Market-Maker has the right to quote (a) electronically in all classes traded on the Hybrid Trading System that are located in one trading station and a certain number of classes traded on the Hybrid 2.0 Platform that are located in one trading station and (b) in open outcry in all classes traded on the Exchange. However, pursuant to CBOE Rule 8.7(d)(i), a Market-Maker that does not transact more than 20% of his contract volume electronically in an appointed Hybrid class during any calendar quarter is not obligated to quote electronically in any designated series within that option class.

In establishing the rules relating to CQLs, the CBOE did not intend, and there would be no purpose, for a Market-Maker, who holds an appointment in a Hybrid class but elects to trade only in open outcry, to count towards the CQL in that option class. Accordingly, the CBOE believes that this interpretation is consistent with the purpose of CBOE Rule 8.3A, which, as noted above, is to limit the number of members that may quote electronically in a particular product to ensure that the Exchange has the ability to effectively handle all quotes generated by members. Although the CBOE anticipates that this situation may arise in only a handful of option classes, absent this interpretation, the CQL in these option classes could be reached even though a certain number of appointed Market-Makers do not submit electronic quotations. As a consequence, other members who might be willing to provide competitive quotations would be prevented from doing so unless the CBOE determines to increase the CQL in accordance with CBOE Rule 8.3A.

In proposed CBOE Rule 8.3A.03, the CBOE notes that in the event the Market-Maker later determines to quote electronically in that option class in which he holds an appointment, the Marker-Maker may do so and would count towards the CQL for that option class, which is consistent with the provisions of CBOE Rule 8.3A. If the total number of members quoting electronically exceeds the CQL for that option class, the option class would have an “increased CQL” as described in CBOE Rule 8.3A.01(a). Reduction in any “increased CQL” will be in accordance with the procedures described in CBOE Rule 8.3A.01(a).

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5),⁸ which require the rules of an exchange to be 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, and protect investors and the public interest.

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

The CBOE 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

The Exchange neither solicited nor received written comments on the proposed rule change.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act⁹ and Rule 19b-4(f)(1) thereunder,¹⁰ 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.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2005-48 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

⁹ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁰ 17 CFR 240.19b-4(f)(1).

¹¹ See supra note 3.

All submissions should refer to File Number SR-CBOE-2005-48. 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 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-2005-48 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.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).