CHICAGO BOARD OPTIONS EXCHANGE

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VIA Electronic Mail
Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release No. 34-59142; File No. SR-NYSEALTR-2008-14

Dear Ms. Harmon:

The Chicago Board Options Exchange, Inc. ("CBOE") is submitting this comment letter in response to a rule change submitted by NYSE Alternext US LLC ("NYSE Amex") to amend its rules governing the trading of listed options on NYSE Amex (Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008)(SR-NYSEALTR-2008-14). NYSE Amex is proposing to (i) adopt new rules for the implementation of a new trading platform for options, NYSE Amex System (''System''), and (ii) govern open outcry trading at the Exchange's new location at 11 Wall Street, New York, NY. CBOE's comments relate to NYSE Amex's proposed introduction of a "Tracking Order" and its proposed introduction of a "Directed Order Market Maker" program. We recognize that the normal comment period has expired, but we feel it is important to raise two areas of concern regarding the NYSE Amex proposal that we believe merit some further clarification.

First, NYSE Amex's proposal describes its "Tracking Order" as an undisplayed limit order that is eligible for execution in the Working Order Process against orders equal to or less than the size of the Tracking Order. The proposal also indicates that Tracking Orders are ranked at their limit price, but are only eligible for execution at a price that matches the national best bid or offer ("NBBO"). (See proposed Rules 900.3NY(d)(6) and 964NY(b)(2)(E)(ii).) Our comments are as follows:

- Tracking Orders Should Not Be Eligible for Crossing: As indicated above, Tracking Orders are hidden, undisclosed orders. Neither the size nor the price of these orders will be exposed in the NYSE Amex System. Because Tracking Orders are not exposed at all in the System, we believe and read NYSE Amex's proposed rules to provide that they are not eligible for crossing pursuant to proposed NYSE Amex Rule 935NY. This Rule provides that, with respect to orders routed to the System, Users may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least three (3) seconds or (ii) the User has been bidding or offering on the Exchange for at least three (3) seconds prior to receiving an agency order that is executable against such bid or offer. To permit crossing of a Tracking Order without exposure of at least the size of the order would be inconsistent with the crossing provisions approved for other options exchanges (see, e.g., Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008)(SR-NASDAQ-2007-080) (Nasdaq Stock Market LLC's Options Market ("NOM") approval order) and Amendment 2 thereto, in which among other things, in response to comment letters, NOM removed a statement in its proposed Chapter VII, Section 12 that its order exposure requirement is satisfied if non-displayed trading interest is entered into the NOM System and would have been displayed for three seconds but for its non-display status.)

- Tracking Order Priority in Open Outcry: It is unclear from the proposal whether, prior to effecting any transactions in open outcry, NYSE Amex members must electronically "sweep" for any Tracking Order interest in the NYSE Amex System. By comparison on other options exchanges, in options classes that have penny price improvement orders (which are displayed by rounding to the nearest standard increment that does not violate the limit price), members seeking to trade in open outcry must electronically sweep any penny price interest so as not to violate the priority of such penny pricing (see, e.g., penny price improving orders under CBOE Rule 6.13B and NYSE Arca, Inc. ("NYSE Arca") Rule 6.73). We believe that the same sweeping requirement should apply for open outcry trading with respect to Tracking Orders, so as not to violate the priority of such orders.

- Handling of Tracking Orders: The examples provided by NYSE Amex stated:

> "For instance, the NBBO market in a series is 2.05 – 2.15, with a 2.10 Tracking Order to buy 10 contracts, but the NYSE Amex displayed bid is 2.00. An order is received to sell 6 contracts at 2.05; this order will be matched against the 2.10 buy Tracking Order at a price of 2.05, matching the NBBO.
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> Similarly, with the same initial scenario, a second Tracking Order to buy 20 contracts paying 2.05 is placed in the Consolidated Book. An order is received to sell 15 contracts at 2.05. This order is matched against the second Tracking Order, since it outsizes the first Tracking Order. It will be executed at 2.05, the NBBO price. If a Tracking Order is executed but not exhausted, the remaining portion of the order shall be cancelled, without

> routing the order to another market center or market participant. A Tracking Order shall not trade-through the NBBO."

(see NYSE Amex Proposal, 73 FR at 80495.) In the second scenario above, the worse-priced undisplayed 20 contract bid for $2.05, which was entered after the undisplayed 10 contract bid for $2.10, appears to have priority because if its size. We understand based on the rule why the incoming order did not trade with the $2.10 tracking bid (because the Tracking Order's size of 10 contracts was smaller than the incoming order's size of 15 contracts). However, we find it questionable whether a $2.05 tracking bid should have priority over the *better priced* $2.10 tracking bid of a smaller size. We also question why the incoming order does not trade at $2.10 against the original tracking order in both scenarios noted above. It is as if the resting $2.10 tracking bid is saying it will trade at $2.10, but only if need be. Other order types on other options exchanges that do not display a price would trade at their limit price, not at a price that fails to provide price improvement to an incoming order (see, e.g., penny price improvement orders under CBOE Rule 6.13B and NYSE Arca Rule 6.73). In addition, the NYSE Amex's proposal fails to explain how a Tracking Order that creates a locked or crossed market on NYSE Amex would be handled. For example, the NBBO is $2.05 - $2.15 in a series with a $2.20 Tracking Order to buy 5 contracts. If the NYSE Amex's displayed offer moves to $2.20 or $2.15, is the Tracking Order cancelled? Can a buy order that is marketable against the national best offer or even the NYSE Amex best offer remain unexecuted?

Second, NYSE Amex's proposal describes a Directed Order Market Maker program (see proposed NYSE Amex Rule 964.1NY). Under this program, if there are any remaining contracts to be executed after matching against Customer orders, and the incoming marketable bid or offer has been directed to a Directed Order Market Maker, the Directed Order Market Maker will receive 40% of the balance of the order, provided the Directed Order Market Maker is quoting at the NBBO for at least that size. This program is similar to other options exchanges' programs (see, e.g., CBOE Rule 8.13 for preferred market makers, and Nasdaq OMX PHLX, Inc. Rule 1080(l) for Directed Specialists, SQTS and RSQTs). However, unlike the other programs, the NYSE Amex proposal would not appear to require their Directed Order Market Makers to be subject to a heightened quoting standard to qualify as Directed Order Market Makers (e.g., CBOE Rule 6.13 requires Market-Makers that are normally subject to continuous electronic quoting obligation in at least 60% of the series of a class to provide continuous electronic quotes in at least 90% of the series of each class). We just want to confirm that our understanding is an accurate reading of the proposal.

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Should you have any questions regarding this letter, please contact me at 312-786-7576.

Sincerely,

Jennifer M. Lamie