SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60187; File No. SR-CBOE-2009-040)

June 29, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding a New Options Market Linkage Structure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 24, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 filing proposes to adopt certain new order handling rules in connection with a new options industry linkage structure. The text of the proposed rule change is available on the Exchange's Web site (http://www.cboe.org/legal), at the Exchange's Principal office, 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 self-regulatory organization 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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

1. Purpose

This filing proposes to adopt rules to facilitate the Exchange's transition to a new intermarket linkage structure. Since 2000, the Exchange has been a participant in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Old Plan"). That plan achieved intermarket order protection via a spoke-and-hub connectivity structure between options exchanges. The Options Clearing Corporation acted as the hub and provided connectivity between exchanges. This connectivity, which did not require the transmission of orders to an exchange through a member of that exchange, allowed for the sending of three order types: P/A orders (which are for the principal account of a market-maker on behalf of a non-broker-dealer customer), P Orders (orders for the proprietary account of a market-maker), and Satisfaction Orders (orders reflecting the terms of a non-broker-dealer customer order resting on an exchange that was traded-through by another market).

The Participants of the Old Plan have established a new plan to provide a more modern framework for options market order protection and locked/crossed markets. The new plan is called the Options Order Protection and Locked/Crossed Market Plan (the "Plan" or "New Plan"). The New Plan does not route orders through a hub. Instead it requires Participants to access better-priced quotations on another market through a member of that market and via the transmission of a new order-type: the Intermarket Sweep Order ("ISO"). The New Plan's order protection provisions are modeled after Regulation NMS Rule 611.

As described below, this filing adopts rules that correspond to the order protection provisions of the New Plan (these rules will generally be uniform with the rules of the other Participants). It also modifies certain Exchange order handling rules to facilitate implementation of the New Plan.

<u>New Plan Rules</u>

The filing proposes to eliminate all of the language in the rules relating to the Old Plan (Rules 6.80 through 6.85) and replace that language with rules mirroring the terms of the New Plan. The new Section E of Chapter 6 would contain a rule providing applicable definitions (Rule 6.80), a rule governing order protection (Rule 6.81), a rule governing locked and crossed markets (Rule 6.82), and a temporary rule regarding the transition from the Old Plan framework to the New Plan (Rule 6.83).

Revised Rule 6.81 provides that members shall not effect trade-throughs. It also lists the various exceptions to trade-through liability. These are: (1) If an Eligible Exchange repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations (provided certain notification, assessment, and documentation requirements are met); (2) a transaction effected during a trading rotation; (3) a transaction during a Crossed Market; (4) the execution of an order identified as an ISO, or an execution effected on the Exchange while it simultaneously routs an ISO to execute against the full displayed size of any better-priced Protected Quotation; (5) the Eligible Exchange displaying the Protected Quotation that was traded through had displayed, within one second prior to execution of the Trade-Through, a Best bid or Best offer, as applicable, for the options series with a price that was equal or inferior to the price of the Trade-Through transaction; (6) the Protected Quotation traded through was being disseminated from an Eligible Exchange whose Quotations were Non-Firm with respect to such options series; (7) the execution of a Complex Trade; (8) the execution of an order for which, at the time of receipt of the order, a Member had guaranteed an execution at no worse than a specified price, where (i) the stopped order was for the account of a Customer, (ii) the Customer agreed to the specified price on an order-by-order basis, and (iii) the price of the Trade-Through was, for a stopped buy (sell) order, lower (higher) than the national Best Bid (Offer) in the options series at the time of execution; (9) the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop; and (10) the execution of an order at a price that was not based, directly or indirectly, on the quoted price of the options series at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.

Proposed Rule 6.82 provides that members shall reasonably avoid (and shall not engage in a pattern of) locking and crossing Protected Quotations. The Rule contains the following exceptions: (1) the locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment; (2) The locking or crossing quotation was displayed at a time when there is a Crossed Market; (3) The Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; and (4) The locking quotation is permissible pursuant to Rules 6.45A(d) and 6.45B(d).[3]

Temporary Rule 6.83 provides that during the transition to the New Plan, the Exchange will continue to receive and execute (and may send) P/A and P orders if the Exchange is the NBBO. Once all Participants have completely migrated to the New Plan structure, this Rule would cease to be necessary. In connection with the transition, CBOE intends to access other Participants via the use of P/A and P orders on a temporary basis pursuant to exemptive relief we are requesting from the Commission until the Exchange's roll-out of the new functionality is complete (once ISO outbound routing is available for a class, the Exchange will cease using P

[3] CBOE Rules 6.45A(d) and 6.45B(d) allow the Exchange to temporarily disseminate a lock between Exchange Market-Makers. This lock is firm for all buy and sell orders.

and P/A orders as well as "old" HAL functionality for that class). The Exchange anticipates that the migration to the New Plan functionality will take several weeks. The Exchange will keep members informed of the rollout schedule via circular and will identify on a class-by-class basis which classes are trading pursuant to the temporary rule and utilizing "old" HAL as well as which classes are trading pursuant to the "new" linkage rules and HAL2.

HAL2

The Exchange proposes to adopt a new Hybrid Agency Liaison System ("HAL2") in proposed Rule 6.14A. The Exchange will determine the eligible order size, eligible order type, eligible order origin code (i.e., public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders), and classes for HAL2.[4] When the Exchange receives a qualifying order that is marketable against the NBBO and/or the Exchange's BBO,[5] HAL2 will "flash" the order at the NBBO price to allow CBOE Market-Makers appointed in that class as well as all members acting as agent for orders at the top of the Exchange's book in the relevant series (and other members if allowed by the Exchange) to step-up to the NBBO price. The duration of the flash period shall not exceed 1 second. The first responder to indicate an interest to trade at the NBBO price will trade against the flashed order up to the size of the response (the flash period will continue for any unexecuted balance). Responders will also be allowed to respond at prices worse than the NBBO but equal to or better than the Exchange's BBO. At the end of the response period (if no responders have matched the NBBO price or if there is a remainder on the flashed order) the HAL2 system will ascertain the best available price(s)

4 As classes migrate to the New Plan on CBOE, the Exchange will be able to utilize HAL2 for those classes (i.e. HAL2 will only be available for classes trading pursuant to the New Plan).

5 Unless the Exchange's quotation contains resting orders and does not contain sufficient Market-Maker quotation interest to satisfy the entire order.

between all pending responses and the best disseminated prices on other exchanges, and then execute the flashed order at the best price(s) by trading it against flash responses first and transmitting ISOs to other exchanges second.

For example, CBOE's best offer is 1.22 for 200 contracts, and the NBBO is 1.19 for 10 contracts with one other market disseminating a 1.20 offer for 20 contracts. An order to buy 100 contracts at 1.22 is received. The order will be flashed at 1.19. Market-Maker A immediately submits a response to trade 10 contracts at 1.19. As a result 10 contracts trade against Market-Maker A at 1.19 (leaving 90 contracts on the order). During the remaining flash period Market-Maker B submits a response to trade 20 contracts at 1.21. As soon as the flash period concludes (assuming the away market prices have not changed), the system will simultaneously: route an ISO to buy 10 contracts at 1.19 to the NBBO market, route an ISO to buy 20 contracts at 1.20 to the market displaying the 1.20 offer, execute 20 at 1.21 against Market-Maker B, and execute the remaining 40 against the Exchange's 1.22 offer using the matching algorithm in effect for the class.

If any portion of an order that is routed away returns unfilled, the Exchange will deem it a "new" order for processing purposes and trade it against the best bid/offer on the Exchange unless another exchange is quoting a better price in which case the Exchange will attempt to access such better price with a new ISO order. Any executions at the Exchange's best bid/offer will be handled in two batches: first against all interest resting at that price at the time the flashed order was received, and second against any interest that joined at that price after the flash process commenced (in both cases the matching algorithm in effect for that class will be used). The Exchange also notes that order senders can bypass HAL2 processing by submitting Immediate or Cancel Orders.

Paragraph (d) of proposed Rule 6.14A lists the circumstances in which a flash period would terminate early. Those are: (1) if the Exchange receives an unrelated order on the same side of the market as the flashed order that is priced equal to or better than the flashed order; (2) if, in the case of an exposed order that is marketable against the Exchange's BBO, Market-Maker interest at the BBO decrements to a size that would be equal to or smaller than the size of the exposed order; and (3) if an unrelated order or quote on the opposite side of the market from the exposed order is received that could trade against the exposed order at the prevailing NBBO or better in which case the orders would trade at the NBBO unless the unrelated order is a customer order in which case the orders would trade at the midpoint of the unrelated order's limit price and the NBBO (e.g. the NBBO/flash price for a buy order is 1.15, during the exposure period a customer limit order to sell at 1.13 is received, the orders will be matched to the greatest extent possible at 1.14 providing price improvement to both orders).[6]

Lastly, Interpretation and Policy .01 to Rule 6.14A provides that the Exchange will limit redistribution of exposed order messages to third parties. Essentially, the purpose of this provision is to provide the Exchange with flexibility to restrict members from passing on or redistributing flash messages to others. Of course, the provisions of Exchange Rule 4.1 (Just and Equitable Principles of Trade) and 4.18 (Prevention of the Misuse of Material, Nonpublic Information) apply to all HAL2 trading.

Price Check Parameter

A new price check parameter is also being adopted in connection with the new HAL2 process (this new parameter is in Rule 6.13(vi)). For classes in which HAL2 is activated, the Exchange will not automatically execute orders that are marketable if the NBBO width is not

6 If the unrelated order was smaller than the exposed order, then the flash would continue for the unexecuted balance of the exposed order.

within an acceptable price range established by the Exchange (APR), or if an execution would follow an initial partial execution and occur at a price that is not within an acceptable tick distance from the initial execution as established by the Exchange (ATD). If an execution is suspended because of the APR, the order will route to PAR for handling. If an execution is suspended because of the ATD, the order will be exposed pursuant to the HAL2 process using the ATD as the exposure price. If a quantity remains after the HAL2 process, the balance will route to PAR (in this regard, the HAL2 processing for these orders is different that normal HAL2 processing). The Exchange notes that users may bypass this processing by submitting orders with an immediate or cancel designation.

<u>New Order Routing Rule</u>

The Exchange proposes to adopt new Rule 6.14B which would govern the Exchange's process for routing sweep orders to other markets. The Exchange intends to contract with one or more routing brokers that are not affiliated with the Exchange to route sweep orders to other exchanges. Any such contract will restrict the use of any confidential and proprietary information that the routing broker receives to legitimate business purposes necessary for routing orders at the direction of the Exchange. Routing services would be available to members only and are optional. Members that do not want orders routed can use the Immediate or Cancel designation to avoid routing.

The rule also provides that (1) the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker, and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services; (2) the Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority; (3) the Exchange will provide its Routing Services in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; (4) the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges; (5) the routing broker cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order; and, (6) any bid or offer entered on the Exchange routed to another exchange via a routing broker that results in an execution shall be binding on the member that entered such bid/offer.

New Order Types

The filing proposes to adopt several new order types that would be added to Rule 6.53: (1) AIM Sweep Order. An AIM sweep order (AIM ISO) is the transmission of two orders for crossing pursuant to Rule 6.74A without regard for better priced Protected Bids/Offers because the member transmitting the AIM ISO to the Exchange has, simultaneously with the routing of the AIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid/Offer that is superior to the starting AIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price (with any execution(s) resulting from such sweeps shall accrue to the AIM Agency Order); (2) Sweep and

AIM Order. A sweep and AIM order is the transmission of two orders for crossing pursuant to Rule 6.74A with an auction starting price that does not need to be within the Exchange's best bid and offer and where the Exchange will "sweep" all Protected Bids/Offers by routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid/Offer that is superior to the starting AIM auction price, as well as sweep all interest in the Exchange's book priced better than the proposed auction starting price concurrent with the commencement of the AIM auction with any execution(s) resulting from such sweeps accruing to the AIM Agency Order; and, (3) CBOE-Only Order. A CBOE-only order is an order to buy or sell that is to be executed in whole or in part on the Exchange without routing the order to another market center and that is to be cancelled if routing would be required under the Exchange's Rules.

Other Changes

In connection with the new linkage structure and the adoption of the rules described above, the Exchange is also making minor changes to other Exchange rules including adding reference to HAL2 to Rule 6.2B, eliminating The "Removal of Unreliable Quotes" provision of Rule 6.13, eliminating references in the Exchanges crossing mechanisms (6.74A and 6.74B) to the block trade exemption of the Old Plan, and deletion of Rule 8.52 relating to the now defunct Pilot Program for Away Market Maker Access.

Implementation

The Exchange represents that the proposed rules will not become operative until the Exchange has withdrawn from the Old Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5) of the Act[8] in particular in that, by making the linkage process more efficient and offering users 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. Moreover, the Exchange believes that adopting rules that implement the Plan will facilitate the trading of options in a national market system by establishing more efficient protection against trade-throughs.

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 self-regulatory organization 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.

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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. Please include File Number SR-CBOE-2009-040 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-2009-040. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-040 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.[9]

Elizabeth M. Murphy
Secretary

[9] 17 CFR 200.30-3(a)(12).