

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-2008-92 and should be submitted on or before October 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-21759 Filed 9-17-08; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58519; File No. SR-CBOE-2008-84]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 8.3A Pertaining to Class Quoting Limits

September 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 8, 2008, the Chicago Board Options Exchange, Incorporated ("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 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 amend CBOE Rule 8.3A pertaining to Class Quoting Limits. The text of the proposed rule change is available on the

Exchange's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary and at the Commission.

#### 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.

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

###### 1. Purpose

CBOE Rule 8.3A establishes the upper limit, *i.e.*, Class Quoting Limit ("CQL"), on the number of members that may quote electronically in a particular product traded on CBOE's Hybrid Trading System. The purpose of this rule change is to amend Interpretations .01 and .03 of CBOE Rule 8.3A.

First, CBOE proposes to amend Interpretation .01(b) which generally provides that CBOE's President may increase the CQL when "exceptional circumstances" warrant. Interpretation .01(b) states that "exceptional circumstances" refers to substantial trading volume, whether actual or expected (*e.g.*, in the case of a new product or a major news announcement). Interpretation .01(b) also provides that when the "exceptional circumstances" cease, the President can reduce the CQL, and includes fair procedures for how such a reduction would occur. CBOE believes that there may be circumstances in which it would be appropriate to increase the CQL in a particular product even though it may not be apparent that there has been, or will be, a substantial change in trading volume in the product. For example, there may be circumstances in which a product is not experiencing a substantial change in trading volume and yet additional members may want to quote electronically in the product. Provided CBOE's trading systems can handle the increase and CBOE's President determines that it would be appropriate, CBOE should be permitted to increase

the CQL in that product.<sup>5</sup> Similarly, CBOE believes that the President should be allowed to decrease the CQL in appropriate circumstances, particularly in those cases where the CQL previously has been increased and provided such increase is no longer needed.

Accordingly, CBOE proposes to amend Interpretation .01(b) to provide that CBOE's President (or his designee) can increase or decrease the CQL in an existing or new product when he/she determines it would be appropriate. One of the factors that would be considered is the trading volume of the product. CBOE believes that amending Interpretation .01(b) as proposed is procompetitive, as it provides more flexibility in determining when to increase the CQL and thus allow more electronic quotes in a particular product. It is also consistent with the purpose of maintaining a CQL, which is to limit the number of members that are quoting electronically in a particular product to ensure that the Exchange has the ability to effectively handle all quotes generated by members. CBOE's President certainly can determine whether CBOE's systems can effectively handle the increase in quote message traffic caused by an increase in the CQL when the President determines that the increase would be appropriate. CBOE is not proposing to change the procedures for decreasing a CQL that are currently contained in Interpretation .01(b).

Second, CBOE proposes to clarify and amend Interpretation .03, which provides that in the event a Market-Maker has not submitted any electronic quotations in an appointed option class during the preceding 30 calendar days, then the Market-Maker's appointment in that option class will be terminated effective immediately. Interpretation .03 expressly states that it only applies to those option classes in which the CQL for the option class is full and there is a wait-list of member(s) requesting the ability to quote electronically in the option class, and that CBOE will notify the Market-Maker prior to terminating its appointment.

In adopting the interpretation, it was not CBOE's intention to allow a Market-Maker, who has chosen not to submit any electronic quotations in an appointed option class during the preceding 30 calendar days, to be able to preserve the Market-Maker's appointment in the option class by submitting one or more electronic quotes and then to discontinue quoting, thereby avoiding the termination.

<sup>5</sup> CBOE notes that it increases the CQL in products infrequently, and when it does, members on the wait-list have first priority.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<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).

Accordingly, CBOE proposes to amend Interpretation .03 to provide that CBOE will notify the Market-Maker that the Market-Maker's appointment has been terminated, as opposed to providing notification prior to termination. The rule text itself provides effective notification to Market-Makers that their appointment in an option class will be terminated if they have not submitted any electronic quotations in the appointed option class during the preceding 30 calendar days. CBOE notes that the circumstances giving rise to this Interpretation do not occur frequently. CBOE also believes that amending Interpretation .03 as proposed promotes competition, as it would allow other members who are ready and willing to provide competitive quotations and liquidity in an option class, in the place of a Market-Maker who chooses not to submit any electronic quotations in the option class for at least 30 calendar days.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (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. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act<sup>6</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. Granting CBOE's President the authority to increase or decrease the CQL in an option class when he deems it appropriate promotes competition and also ensures that the integrity of CBOE's trading systems are protected. Similarly, terminating a Market-Maker's appointment when the Market-Maker has elected not to submit electronic quotations in an option class for 30 calendar days also promotes competition in that it will provide an opportunity to other Market-Makers who are ready and willing to provide competitive quotations and liquidity in the option class.

## 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 consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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,<sup>7</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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:

### 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-2008-84 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-84. 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 a.m. and 3 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-2008-84 and should be submitted on or before October 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-21766 Filed 9-17-08; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> CBOE fulfilled this requirement.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 200.30-3(a)(12).