

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item 1 and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) The Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") proposes to amend Rule 6.8C, Prohibition Against Members Functioning as Market-Makers, to eliminate some of its restrictions. The Exchange also proposes to make a related cross-reference update to Rule 1.1(fff), which pertains to Voluntary Professionals. Set forth below are proposed changes to the rule text, with additions represented by underscoring and deletions represented by [brackets].

Chicago Board Options Exchange, Incorporated
Rules

* * * * *

Rule 1.1

* * * * *

(fff) The term "Voluntary Professional" means any person or entity that is not a broker or dealer in securities that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of Rules 6.2A, 6.2B, 6.8C, 6.9, 6.13A, 6.13B, 6.45, 6.45A (except for Interpretation and Policy .02), 6.45B (except for Interpretation and Policy .02), 6.53C(c)(ii), 6.53C(d)(v), subparagraphs (b) and (c) under Interpretation and Policy .06 to Rule 6.53C, 6.74 (except Voluntary Professional orders may be considered public customer orders subject to facilitation under paragraphs (b) and (d)), 6.74A (except Voluntary Professional orders may be considered customer Agency Orders or solicited orders under Interpretation and Policy .09), 6.74B, 8.13, 8.15B, 8.87, 24.19, 43.1, 44.4, 44.14, and for cancellation fee treatment. The Voluntary Professional designation is not available in Hybrid 3.0 classes.

* * * * *

Rule 6.8C - Prohibition Against Members Functioning as Market-Makers

RULE 6.8C. (a) Members [firms, acting as either principal or agent,] may neither enter nor permit the entry of customer orders into the Exchange's electronic Order Routing System if (i) the orders are limit orders for the account or accounts of the same beneficial owner(s) and (ii) the limit orders are entered in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis.

(b) In determining whether a beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near simultaneous entry of limit orders to buy and sell the same security[; the multiple acquisition and liquidation of positions in the security during the same day;] and the entry of multiple limit orders at different prices in the same security.

* * * * *

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The CBOE's Office of the Chairman approved the proposed rule change on February 17, 2009. No further action is required.

(b) Please refer questions and comments on the proposed rule change to Joanne Moffic-Silver, General Counsel, CBOE, Inc., 400 South LaSalle, Chicago, IL 60605, (312) 786-7462 or Jennifer Lamie, (312) 786-7576.

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange is proposing to amend Rule 6.8C in order to eliminate some of its restrictions. First, Rule 6.8C currently provides that a member, acting either as principal or agent, may neither enter nor permit the entry of orders into the Exchange's electronic order routing system if (i) the orders are limit orders for the account or accounts of the same beneficial owner(s) and (ii) the limit orders are entered in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis. The Exchange is proposing that these restrictions be amended to only be applicable to customer orders (i.e., non-broker-dealer orders) that are not Voluntary Professional orders (as described below), since such customer orders have priority at any price over the bids and offers of non-customers.¹ The

¹ We note that the Securities and Exchange Commission ("Commission") has previously found that it is consistent with the Securities and Exchange Act of 1934

restrictions would no longer be applicable to instances where a member is acting as principal on its own behalf or is acting as agent on behalf of other broker-dealer orders or Voluntary Professional orders (which are a sub-category of customer orders that are treated in the same manner as broker-dealer orders).²

Rule 6.8C was adopted in 2001 to limit the ability of members that are not Designated Primary Market-Makers or market makers to compete on preferential terms within CBOE's automated systems. Because customer orders are provided with certain benefits such as priority of bids and offers, we continue to believe that customer orders should be subject to the Rule's restrictions. However, because broker-dealer orders are not subject to priority that is any better than market makers, we no longer believe it is necessary to impose the Rule's

(the "Act") for an options exchange not to prohibit a user of its market from effectively operating as a market maker by holding itself out as willing to buy and sell options contracts on a regular or continuous basis without registering as a market maker. See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008)(SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080)(order approving, among other things, the rules governing the trading of options on the NASDAQ Options Market ("NOM")). We also note that the Commission has published a rule proposal for the NYSE Alternext US LLC ("Amex") that would only prohibit de facto market making through the use of customer orders, since customer orders have priority at any price over the bids and offers of non-customers but that would not prohibit such activity for other non-market maker broker-dealers. See Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008)(SR-NYSEALTR-2008-14)(notice of proposal to, among other things, adopt rules governing the trading of options on a new Amex trading platform).

² A Voluntary Professional is a new category of non-member market participant on the Exchange. The term "Voluntary Professional," means any person or entity that is not a broker or dealer in securities that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of certain order handling, order execution, and cancel fee calculation purposes. See Rule 1.1(fff) and Securities Exchange Act Release No. 58327 (August 7, 2008), 73 FR 47988 (August 15, 2008)(SR-CBOE-2008-09). As part of this rule change, the Exchange is proposing to amend Rule 1.1(fff) to provide that a Voluntary Professional will be treated in the same manner as a broker or dealer in securities for purposes of Rule 6.8C.

restrictions on the entry of broker-dealer orders. Similarly, because Voluntary Professionals are not subject to priority that is any better than market makers, we do not believe it is necessary to impose the Rule's restrictions on Voluntary Professionals.³

Second, in those instances where the restrictions are applicable, Rule 6.8C currently provides that, in determining whether a beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near simultaneous entry of limit orders to buy and sell the same security, the entry of multiple limit orders at different prices in the same security, and the multiple acquisition and liquidation of positions in the security during the same day. The Exchange is proposing to

³ We note that this rule change would only eliminate the restrictions of Rule 6.8C in the manner proposed. Members would continue to remain subject to the requirements of Rule 4.18 (which requires members to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member's business, to prevent the misuse of material, nonpublic information by such member or persons associated with such member), Rule 6.9(e), (which considers it conduct inconsistent with just and equitable principles of trade and a violation of Rule 4.1 for any member or person associated with a member, who has knowledge of all material terms and conditions of an original order and a solicited order, including a facilitation order, that matches the original order's limit, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as an option that is the subject of the original order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (i) all the terms and conditions of the original order and any changes in the terms and conditions of the original order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the solicited trade can no longer reasonably be considered imminent in view of the passage of time since the solicitation); and Rules 6.45A.01 and 6.45B.01 (which provide that order entry firms may not execute as principal against orders they represent as agent unless: (i) agency orders are first exposed on the Hybrid System for at least one second, (ii) the order entry firm has been bidding or offer for at least one second prior to receiving an agency order that is executable against such bid or offer, or (iii) the order entry firm proceeds in accordance with the crossing rules contained in Rule 6.74); and Rules 6.45A.02 and 6.45B.02 (which provide that order entry firms must expose orders they represent as agent for at least one second before such orders may be executed electronically via the electronic execution mechanism of the Hybrid System, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders).

remove this latter condition pertaining to the multiple acquisition and liquidation of positions from its list of factors used for determining whether a beneficial owner is operating as a market maker. In light of the proliferation of day trading activity and the fact that such a prohibition does not exist on at least one other market,⁴ we no longer believe this activity should be considered a factor in determining whether a beneficial owner is effectively acting as a market maker.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed changes to the rule should continue to contribute to the Exchange's ability to maintain a fair and orderly market in a manner that will limit unfair advantage and encourage competition.

Item 4. 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.

Item 5. 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.

⁴ See note 1, supra.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Act⁷ for Commission consideration of the proposed rule change.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

Item 8. Proposed Rule Change Based on Rules or By-Laws of Another Self-Regulatory Organization or of the Commission

The proposed rule change is partially based on NOM's rules and Amex's proposed rules.⁸

Item 9. Exhibits

Exhibit 1. Notice of proposed rule change for publication in the Federal Register.

⁷ 15 U.S.C. 78s(b)(2).

⁸ See note 1, supra.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-CBOE-2009-009)

Dated: _____

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change to Amend its Rules Prohibiting Members from Functioning as Market-Makers

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 _____, 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 Exchange proposes to amend Rule 6.8C, Prohibition Against Members Functioning as Market-Makers, to eliminate some of its restrictions. The Exchange also proposes to make a related cross-reference update to Rule 1.1(fff), which pertains to Voluntary Professionals. The text of the proposed rule change is available on the Exchange's website (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange is proposing to amend Rule 6.8C in order to eliminate some of its restrictions. First, Rule 6.8C currently provides that a member, acting either as principal or agent, may neither enter nor permit the entry of orders into the Exchange's electronic order routing system if (i) the orders are limit orders for the account or accounts of the same beneficial owner(s) and (ii) the limit orders are entered in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis. The Exchange is proposing that these restrictions be amended to only be applicable to customer orders (i.e., non-broker-dealer orders) that are not Voluntary Professional orders (as described below), since such customer orders have priority at any price over the bids and offers of non-customers.³ The

³ We note that the Commission has previously found that it is consistent with the Act for an options exchange not to prohibit a user of its market from effectively operating as a market maker by holding itself out as willing to buy and sell options contracts on a regular or continuous basis without registering as a market maker. See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008)(SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080)(order approving, among other things, the rules governing the trading of options on the NASDAQ

restrictions would no longer be applicable to instances where a member is acting as principal on its own behalf or is acting as agent on behalf of other broker-dealer orders or Voluntary Professional orders (which are a sub-category of customer orders that are treated in the same manner as broker-dealer orders).⁴

Rule 6.8C was adopted in 2001 to limit the ability of members that are not Designated Primary Market-Makers or market makers to compete on preferential terms within CBOE's automated systems. Because customer orders are provided with certain benefits such as priority of bids and offers, we continue to believe that customer orders should be subject to the Rule's restrictions. However, because broker-dealer orders are not subject to priority that is any better than market makers, we no longer believe it is necessary to impose the Rule's restrictions on the entry of broker-dealer orders. Similarly, because Voluntary Professionals

Options Market ("NOM")). We also note that the Commission has published a rule proposal for the NYSE Alternext US LLC ("Amex") that would only prohibit de facto market making through the use of customer orders, since customer orders have priority at any price over the bids and offers of non-customers but that would not prohibit such activity for other non-market maker broker-dealers. See Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008)(SR-NYSEALTR-2008-14)(notice of proposal to, among other things, adopt rules governing the trading of options on a new Amex trading platform).

⁴ A Voluntary Professional is a new category of non-member market participant on the Exchange. The term "Voluntary Professional," means any person or entity that is not a broker or dealer in securities that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of certain order handling, order execution, and cancel fee calculation purposes. See Rule 1.1(fff) and Securities Exchange Act Release No. 58327 (August 7, 2008), 73 FR 47988 (August 15, 2008)(SR-CBOE-2008-09). As part of this rule change, the Exchange is proposing to amend Rule 1.1(fff) to provide that a Voluntary Professional will be treated in the same manner as a broker or dealer in securities for purposes of Rule 6.8C.

are not subject to priority that is any better than market makers, we do not believe it is necessary to impose the Rule's restrictions on Voluntary Professionals.⁵

Second, in those instances where the restrictions are applicable, Rule 6.8C currently provides that, in determining whether a beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near simultaneous entry of limit orders to buy and sell the same security, the entry of multiple limit orders at different prices in the same security, and the multiple acquisition and liquidation of positions in the security during the same day. The Exchange is proposing to remove this latter condition pertaining to the multiple acquisition and liquidation of positions

⁵ We note that this rule change would only eliminate the restrictions of Rule 6.8C in the manner proposed. Members would continue to remain subject to the requirements of Rule 4.18 (which requires members to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member's business, to prevent the misuse of material, nonpublic information by such member or persons associated with such member), Rule 6.9(e), (which considers it conduct inconsistent with just and equitable principles of trade and a violation of Rule 4.1 for any member or person associated with a member, who has knowledge of all material terms and conditions of an original order and a solicited order, including a facilitation order, that matches the original order's limit, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as an option that is the subject of the original order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (i) all the terms and conditions of the original order and any changes in the terms and conditions of the original order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the solicited trade can no longer reasonably be considered imminent in view of the passage of time since the solicitation); and Rules 6.45A.01 and 6.45B.01 (which provide that order entry firms may not execute as principal against orders they represent as agent unless: (i) agency orders are first exposed on the Hybrid System for at least one second, (ii) the order entry firm has been bidding or offer for at least one second prior to receiving an agency order that is executable against such bid or offer, or (iii) the order entry firm proceeds in accordance with the crossing rules contained in Rule 6.74); and Rules 6.45A.02 and 6.45B.02 (which provide that order entry firms must expose orders they represent as agent for at least one second before such orders may be executed electronically via the electronic execution mechanism of the Hybrid System, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders).

from its list of factors used for determining whether a beneficial owner is operating as a market maker. In light of the proliferation of day trading activity and the fact that such a prohibition does not exist on at least one other market,⁶ we no longer believe this activity should be considered a factor in determining whether a beneficial owner is effectively acting as a market maker.

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 it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed changes to the rule should continue to contribute to the Exchange's ability to maintain a fair and orderly market in a manner that will limit unfair advantage and encourage competition.

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.

⁶ See note 3, *supra*.

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

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.

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-2009-009 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-2009-009. 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 am and 3:00 pm. 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-2009-009 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.⁹

Dated: _____

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).