

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59038; File No. SR-CBOE-2008-118]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Related to Obvious Error Rules

December 2, 2008.

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 November 26, 2008, 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 6.25 and Rule 24.16 to adopt procedures which would allow CBOE to review transactions on its own motion. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE 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 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 proposes to amend Rule 6.25 and Rule 24.16 pertaining to the nullification and adjustment of options

transactions. Specifically, CBOE proposes to adopt a new provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the President of CBOE or his/her designee (collectively “CBOE officer”), who shall be an officer of CBOE but may not be a member, may, on his or her own motion or upon request, determine to review any transaction occurring on CBOE that is believed to be erroneous.³ A transaction reviewed pursuant to this new paragraph (3) may be nullified or adjusted only if it is determined by the CBOE officer that the transaction is erroneous as provided in Rule 6.25(a)(1)–(6) or Rule 24.16(a)(1)–(6). A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction.⁴ The CBOE officer may be assisted by Trading Officials in reviewing a transaction (or the senior official in the control room in the case of transactions being reviewed under 6.25(a)(6) or Rule 24.16(a)(6)).

The CBOE officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the CBOE officer shall act no later than 8:30 a.m. (CT) on the next trading day following the date of the transaction at issue. A member affected by a determination to nullify or adjust a transaction pursuant to this new paragraph (3) may appeal such determination in accordance with Rule 6.25(d) or Rule 24.16(d); however, a determination by a CBOE officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. CBOE believes it is appropriate to limit review on appeal to only those situations in which a transaction is actually nullified or adjusted. Additionally, transactions adjusted or nullified pursuant to this new paragraph cannot be reviewed by an Obvious Error Panel under paragraph (c) of Rule 6.25.

This new provision is not intended to replace a party’s obligation to request review, within the required time periods

³ In the event a party to a transaction requests that the President or his/her designee review a transaction, the CBOE officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

⁴ With regard to Rule 24.16, paragraph (c) pertaining to adjustments and nullifications would also be considered.

under Rule 6.25 and Rule 24.16, of any transaction that it believes meets the criteria for an obvious error. And, if a transaction is reviewed and a determination is rendered pursuant to paragraphs (b)(1) and (b)(2), Rule 6.25 and Rule 24.16, as amended, specifically state that relief shall not be granted under this new paragraph (b)(3).

Moreover, CBOE does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of a transaction under paragraph (b)(1) of Rule 6.25 and Rule 24.16. CBOE believes this provision will help to protect the integrity of its marketplace by vesting a CBOE officer with the authority to review a transaction that may be erroneous, in those situations where a party failed to make a timely request for a review.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (“Act”)⁵ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. CBOE notes that the CBOE officer can adjust or nullify a transaction under the authority granted by this new provision only if the transaction meets the objective criteria for an obvious error under CBOE’s rules.

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.

⁵ 15 U.S.C. 78f(b)(1).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange 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-2008-118 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-2008-118. 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 the filing also will be available

for inspection and copying at the principal office of the Exchange. 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-2008-118 and should be submitted on or before December 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59033; File No. SR-DTC-2008-08]

Self-Regulatory Organizations; the Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Eliminate the Ability To Obtain a Physical Certificate From DTC for Issues That Are Eligible and Participating in the Direct Registration System

December 1, 2008.

I. Introduction

On July 9, 2008, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2008-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on September 2, 2008.² The Commission received two comment letters.³ For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Currently, DTC participants (*i.e.*, broker-dealers and banks) use the Withdrawal-by-Transfer ("WT") service to instruct DTC to have securities assets held in the participant's DTC account reregistered in the name of an individual investor, a firm, or a third party. The reregistered assets can be issued in certificated form or as a DRS

position.⁴ On receipt of a WT instruction from a participant, DTC either (i) sends a certificate the issuer's transfer agent for reregistration in the name of the person or entity identified in the WT instruction or (ii) instructs the issuer's transfer agent to debit DTC's position and issue securities in the name of the person or entity identified in the WT instruction.

In an effort to further reduce the industry's dependency on physical certificates, DTC is eliminating the issuance of physical certificates through its WT service for issues that participate in DRS. DTC believes this modification of its WT service reaffirms its goals of reducing the costs and risk associated with processing physical certificates.

Pursuant to the rule change, beginning January 1, 2009, DTC will no longer provide for the issuance of a certificate through the WT service if the issue is participating in DRS. Instead, DTC will instruct the issuer's transfer agent to establish a DRS position and to provide a DRS statement in lieu of a physical certificate. An investor will still be able to obtain a physical certificate to the person or entity identified in the WT instruction by taking the investor's DRS statement directly to the issuer's transfer agent for conversion to a certificate or by using DTC's Deposit and Withdrawal at Custodian ("DWAC") process.⁵

The rule change will also eliminate a participant's ability to obtain a physical certificate through the WT service for issues eligible but not participating in DRS on or after July 1, 2009 ("elimination date"). For the small number of issues anticipated not to have become eligible to participate in DRS by the elimination date, WT instructions requesting a physical certificate may continue to be processed through DWAC or Rush WT processes.

Additionally, the rule change will eliminate DTC's Direct Mail by Depository ("DMD") service for all issues in the fourth quarter of 2009. As a result, DTC will no longer mail certificates to investors. Participants will still be able to use the Direct Mail by Agent ("DMA") service through which DTC instructs the transfer agent to provide DRS statements or physical certificates to investors or their

⁴ Issues that participate in the DRS program allow investors to hold their assets in DRS book-entry form on the books of the issuer.

⁵ DWAC is a method of electronically transferring shares between participants and the transfer agent. For more information about the DWAC service, see Securities Exchange Act Release No. 30283 (January 23, 1992), 57 FR 3658 (January 30, 1992) [File No. SR-DTC-91-16] (order granting approval of the DWAC service).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 58404 (August 21, 2008), 73 FR 51326.

³ Letters from Daniel Raider (September 30, 2008) and Candice D. Fordin, Associate Counsel, The Depository Trust Company (October 13, 2008).