

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)²⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Exchange believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest. NYSE notes that immediate effectiveness of the proposed rule change will immediately and timely enable NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The Commission believes that waiving the 30-day operative delay²¹ is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to continue operation of interim NYSE Rule 128 on an uninterrupted basis, and therefore designates the proposal operative upon filing.

At any time within 60 days of the filing of the 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. Please include File Number SR-NYSE-2009-79 on the subject line.

prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSE-2009-79. 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 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 publicly available. All submissions should refer to File Number SR-NYSE-2009-79 and should be submitted on or before August 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-19033 Filed 8-7-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60420; File No. SR-CBOE-2009-052]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to the Hybrid Matching Algorithms

August 3, 2009.

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 July 17, 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 Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, to adopt a modified participation entitlement priority overlay. 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²² 17 CFR 200.30-3(a)(12).

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

1. Purpose

CBOE Rules 6.45A and 6.45B set forth, among other things, the manner in which electronic Hybrid System trades in options are allocated. Paragraph (a) of each rule essentially governs how incoming orders received electronically by the Exchange are electronically executed against interest in the CBOE quote. Paragraph (a) of each rule currently provides a "menu" of matching algorithms to choose from when executing incoming electronic orders. The menu format allows the Exchange to utilize different matching algorithms on a class-by-class basis. The menu includes, among other choices, price-time and pro-rata priority matching algorithms with additional priority overlays.³ The priority overlays currently include: Public customer priority for public customer orders resting on the Hybrid System, participation entitlements for certain qualifying market-makers, and a market turner priority for participants that are first to improve CBOE's disseminated quote. These overlays are optional.

The purpose of this rule filing is to adopt an additional priority overlay for the price-time and pro-rata matching algorithms, which the Exchange will refer to as the "modified participation entitlement." The modified participation entitlement will operate in the same manner as the existing participation entitlement with a few exceptions described below.⁴ In

³ The menu also includes a matching algorithm called the Ultimate Matching Algorithm ("UMA"). CBOE is not proposing any changes to the UMA matching algorithm at this time.

⁴ Under the existing participation entitlement, the Exchange may determine to grant Market-Makers participation entitlements pursuant to the provisions of Rules 8.87, *Participation Entitlement of DPMs and e-DPMs*, 8.13, *Preferred Market-Maker Program*, or 8.15B, *Participation Entitlement of LLMs*. More than one such participation entitlements may be activated for an option class (including at different priority sequences), however in no case may more than one participation entitlement be applied on the same trade. In allocating the participation entitlement, all of the following apply: (i) To be entitled to their participation entitlement, the Market-Maker's order and/or quote must be at the best price on the Exchange. (ii) The Market-Maker may not be allocated a total quantity greater than the quantity that it is quoting (including orders not part of quotes) at that price. If pro-rata priority is in effect, and Market-Maker's allocation of an order pursuant to its participation entitlement is greater than its percentage share of quotes/orders at the best price at the time that the participation entitlement is granted, the Market-Maker shall not receive any further allocation of that order. (iii) In establishing the counterparties to a particular trade, the participation entitlement must first be counted

particular, if the modified participation entitlement is in effect for an option class, then the following would apply:

- If at the time of execution there are no public customer orders resting at the execution price, then the Market-Maker participation entitlement would be applied. This outcome is no change from how the existing participation entitlement works today.
- If at the time of execution there is a public customer order that was entered first in time sequence among all other resting trading interest at the execution price, then the Market-Maker participation entitlement would be applied after public customer orders are satisfied. This outcome is no change from how the existing participation entitlement works today.
- In all other cases involving the allocation of an incoming electronic order, *i.e.*, if at the time of execution there is one or more public customer orders resting at the execution price but none was entered first in time sequence, then the Market-Maker participation entitlement and public customer priority overlays would not be applied to the allocation. This outcome is a change from how the existing participation entitlement works today.⁵
- The modified participation entitlement would not be used for any electronic auctions; instead, the existing participation entitlement parameters would be applied.⁶ Thus, the outcome would be no change from how the

against that Market-Maker's highest priority bids or offers. (iv) The participation entitlement shall not be in effect unless the public customer priority is in effect in a priority sequence ahead of the participation entitlement and then the participation entitlement shall only apply to any remaining balance. *See* Rules 6.45A(a)(ii)(2) and 6.45B(a)(i)(2).

⁵ For example, assume the matching algorithm for an options class is established so that public customer orders have first priority, the modified participation entitlement has second priority, and any remaining balance is allocated using the pro-rata matching algorithm. If at the time of execution there is one or more public customer orders at the execution price but none is first in time sequence (say because a Market-Maker quote was the first trading interest posted at the execution price), then the Market-Maker participation entitlement and public customer priority overlays would not be applied and the incoming order would be allocated solely on a pro-rata basis.

⁶ CBOE has various electronic auctions that are described under Rules 6.13A, *Simple Auction Liaison ("SAL")*, 6.14, *Hybrid Agency Liaison ("HAL")*, 6.53C(d), *Process for Complex Order RFR Auction ("COA")*, 6.74A, *Automated Improvement Mechanism ("AIM")*, and 6.74B, *Solicitation Auction Mechanism ("AIM SAM")*. Each of these auctions generally allocates executions pursuant to the matching algorithm in effect for the options class with certain exceptions noted in the respective rules. For example, no participation entitlement is applied to orders executed through HAL or AIM.

existing participation entitlement works today for electronic auctions.

Lastly, it should be noted that, like the existing priority overlays, the modified participation entitlement is optional. As with the existing procedures, the Exchange will continue to determine whether one or more of the priority overlays shall apply to an option class and if more than one is selected, the sequence in which they shall apply (consistent with applicable rules). All determinations would be set forth in a regulatory circular.

2. Statutory Basis

This change will allow the Exchange another method to reward aggressive pricing in options trading on the Hybrid System. Accordingly, CBOE believes the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

(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 No. SR-CBOE-2009-052 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 No. SR-CBOE-2009-052. 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 changes 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 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 No. SR-CBOE-2009-052 and should be submitted on or before August 31, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-19018 Filed 8-7-09; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 9, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205-7044.

SUPPLEMENTARY INFORMATION:

Title: Application for Small Business Size Determination.

SBA Form Number: 355.

Frequency: On Occasion.

Description of Respondents: Small Businesses.

Responses: 600.

Annual Burden Hours: 2,400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9-19013 Filed 8-7-09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA-2009-0142]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before October 9, 2009.

ADDRESSES: Direct all written comments to the U.S. Department of Transportation Dockets, 1200 New Jersey Ave, SE., W46-474, Washington, DC 20590. Docket No. NHTSA-2009-0142.

FOR FURTHER INFORMATION CONTACT:

Scott Roberts, PhD, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI-132), National Highway Traffic Safety Administration, 1200 New Jersey Ave, SE., W46-495, Washington, DC 20590. Dr. Roberts' phone number is 202-366-5594 and his e-mail address is *Scott.Roberts@dot.gov*.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

⁹ 17 CFR 200.30-3(a)(12).