and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.[10]

The Commission believes that the proposed at-risk cross procedure is consistent with the Act in that it is intended to provide public customer orders with additional opportunity for price improvement without affording unfair advantage to the member firms that submit such customer orders and seek to trade against them. Under the proposal, a floor broker may attempt to cross a public customer order entirely against an order from the member firm from which it originated only after the floor broker, on behalf of the member firm, improves the price quoted to the customer by the trading crowd, and thereafter affords the crowd an opportunity to break up the cross by improving the price still one MPV better. Moreover, the trading crowd alternatively could break up the attempted cross by trading with the member firm's order at the member firm's price.

In addition, the Commission believes that the at-risk cross procedure may encourage the members of the trading crowd to put forth their best bids or offers when the customer order is first presented to the crowd. This is because the floor broker would be able to establish priority by improving the trading crowd's quoted market, and then would be permitted to cross the entire order at the improved price. Accordingly, the Commission believes that members of the trading crowd will have a greater incentive to make larger, tighter markets in response to customer orders, thereby improving the auction market.

The Commission notes further that if a public customer order either on the book or represented in the trading crowd has priority over the at-risk cross, the member firm would be permitted to participate only in those contracts remaining after the public customer's order has been filled.[11] In addition, if there is a public customer order on the book or represented in the trading crowd on the same side of the market as, and priced at or better than, the public customer order that is part of the at-risk cross, the public customer order on the book or represented in the trading crowd would have priority.[12]

The Commission also finds that the Exchange's at-risk cross proposal is consistent with Section 11(a) under the Act.[13] The Commission notes that orders relying on the exemption provided by Section 11(a)(1)(G) of the Act (for ''G Orders'') [14] from the prohibitions of Section 11(a) may be executed as an at-risk cross only if the requirements of Section 11(a)(1)(G) are met. Specifically, the Exchange has noted that if a G Order is entered by a floor broker as part of an at-risk cross transaction, the G Order will not be permitted to execute ahead of any non-member order on the book.[15]

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publishing notice of Amendment Nos. 3 and 4 in the **Federal Register**. The Commission notes that the proposal, as modified by Amendment Nos. 1 and 2, was published for a full notice and comment period,[16] and that the Commission received no comment letters on the proposal. Further, Amendment Nos. 3 and 4 were published for a 15-day comment period, and the Commission received no comment letters. Amendment No. 3 made technical and clarifying changes and confirmed previous verbal representations made by the Exchange. The Commission believes that these clarifications serve to enhance the proposal and raise no new or novel issues. Amendment No. 4 proposed to permit the at-risk crossing procedure to apply to options classes that are part of the options penny pilot program (''penny pilot options'').[17] The Commission believes that orders in the penny pilot options should be afforded the same potential for price improvement through the at-risk cross procedure as other options classes, and that applying the at-risk cross procedure to penny pilot options raises no additional significant regulatory issues that were not considered in the original proposal. Therefore, the Commission believes that no purpose is served by delaying approval of the proposal, as amended. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[18] to approve the proposal, as modified by Amendment Nos. 1, 2, 3, and 4, on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–2006–17), as modified by Amendment Nos. 1, 2, 3, and 4, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11367 Filed 6–12–07; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] *See* Commentary .03 to Amex Rule 950–ANTE(d) and Notice, *supra* note 3, at n.7. *See also* Notice of Amendment Nos. 3 and 4, *supra* note 4.

[12] *See* Notice of Amendment Nos. 3 and 4, *supra* note 4.

[13] 15 U.S.C. 78k(a).

[14] 15 U.S.C. 78k(a)(1)(G).

[15] *See* Notice, *supra* note 3.

[16] *See id.*

[17] *See* Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR–Amex–2006–106). Amendment No. 4 also made non-substantive rule text changes and showed the text of the final proposal as marked against the current text of Amex Rule 950–ANTE(d).

[18] 15 U.S.C. 78s(b)(2).

[19] 5 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55874; File No. SR–CBOE–2006–101]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto To Amend CBOE's Rules To Reflect the Migration of Its TPF Technology Platform Over to the Existing CBOEdirect Technology Platform

June 7, 2007.

I. Introduction

On November 30, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to introduce a third trading platform into its existing CBOEdirect system, ''Hybrid 3.0.'' The Exchange submitted Amendment No. 1 to the proposed rule change on February 15, 2007. The Exchange submitted Amendment No. 2

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

[2] 17 CFR 240.19b–4.

to the proposed rule change on April 13, 2007.[3] The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on May 3, 2007.[4] The Commission did not receive any comments regarding the proposal. This order approves the proposed rule change as modified by Amendment Nos. 1 and 2.

II. Description of the Proposal

In 2003, CBOE introduced the Hybrid Trading System (''Hybrid'' or ''Hybrid System''), an electronic trading platform integrated with CBOE's floor-based open-outcry auction market.[5] Under CBOE's existing rules, the Hybrid System currently supports two trading platforms: (i) The original Hybrid Trading System, which is a trading platform that allows individual Market-Makers to submit electronic quotes in their appointed classes; and (ii) Hybrid 2.0, which is an enhanced trading platform that allows remote quoting by authorized categories of Exchange members. These two platforms operate on a technology system that is referred to as the CBOEdirect trade engine. In addition to these two platforms, prior to 2003 and through the present, CBOE has also utilized its TPF mainframe system to support trading in its ''non-Hybrid'' classes.[6] Therefore, options classes currently may be authorized by the Exchange to trade on the non-Hybrid, original Hybrid Trading System or Hybrid 2.0 platforms.

CBOE has determined to migrate the trading programs operating on its TPF mainframe system to the CBOEdirect trade engine. To accommodate this changeover, CBOE has proposed to amend its Hybrid rules to introduce a third trading platform into its existing CBOEdirect system, called ''Hybrid 3.0,'' which incorporates certain aspects of both the Hybrid Trading System and non-Hybrid platforms. The more significant aspects of the proposal are outlined below.[7]

A. Quoting

As proposed, the Hybrid 3.0 platform will allow a single electronic quote, which will represent the aggregate Market Maker quoting interest in each option series for the trading crowd (''Hybrid 3.0 crowd quote''). This single quote will be generated from either an appointed Designated Primary Market Maker (''DPM'') or Lead Market Maker (''LMM''). In this way, Hybrid 3.0 will operate in a manner similar to the existing non-Hybrid platform where an appointed DPM or LMM may generate an automated quote for the trading crowd.[8]

In Hybrid 3.0, members of the trading crowd will be able to submit manual quotes. Specifically, members of the trading crowd will be able to verbalize manual quotes to be input into Exchange systems by quote reporters for dissemination to the Options Price Reporting Authority (''OPRA'').[9] The manual quote disseminated in Hybrid 3.0 classes will be separate and additional to the Hybrid 3.0 crowd quote. If market participants (which include in-crowd market makers) are eligible to submit orders for entry into the electronic book, then the appropriate Procedure Committee may determine to disable manual quotes.[10]

B. Order Eligibility for Entry into Electronic Book

In Hybrid 3.0, public customer orders are automatically eligible for electronic book entry.[11] Moreover, in Hybrid 3.0, the appropriate Procedure Committee can determine, on a class by class basis, to allow certain other types of orders into the electronic book, including orders of market participants and broker-dealers.[12] These eligibility rules are the same as the existing rules for other Hybrid classes except that, with respect to other Hybrid classes, market participants are eligible to submit orders for entry into the electronic book without the appropriate Procedure Committee's approval. The proposed electronic book eligibility rules for Hybrid 3.0 are consistent with current practices in CBOE's non-Hybrid classes.[13]

C. Automatic Execution of Incoming Orders

Hybrid 3.0 proposes to permit automatic execution of non-broker-dealer public customer orders. In addition, the appropriate Procedure Committee may determine, on a class by class basis, to allow orders of broker-dealers that are not market-makers or specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to Section 7(c)(2) of the Act (''non-Market-Maker or non-Specialist broker-dealers'') to be eligible for automatic execution.[14]

For Hybrid 3.0 classes, incoming orders that are eligible to receive automatic execution will execute against public customer orders in the electronic book. The remaining balance of the incoming order, if any, may be (i) Represented in the electronic book provided such order is eligible for book entry [15] or (ii) if the order is not eligible for book entry, it will route to PAR, BART, or to the order entry firm's booth printer.

On the Hybrid 3.0 platform, automatic execution against quotes (whether electronic or manual) will not be allowed.[16] However, if the electronic book price matches a manual quote, then automatic execution will be permissible against public customer orders in the electronic book.[17] CBOE represented that, consistent with existing practices in CBOE's non-Hybrid

[3] Amendment No. 2 replaced and superseded Amendment No. 1 and the original filing in their entireties.

[4] Securities Exchange Act Release No. 55674 (April 26, 2007), 72 FR 24639 (May 3, 2007).

[5] *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003).

[6] The three current non-Hybrid classes are options: on the S&P 100 Index—OEX; options on the S&P 500 Index—SPX; and options on the Morgan Stanley Retail Index—MVR.

[7] To incorporate Hybrid 3.0 into CBOE's existing Hybrid rules, CBOE has proposed to define all references to ''Hybrid,'' ''Hybrid System,'' and ''Hybrid Trading System'' in CBOE's rules to mean all CBOE hybrid platforms, including Hybrid 3.0, unless otherwise provided by a specific CBOE rule.

[8] Currently, the non-Hybrid platform allows for the use of an Exchange-sponsored autoquote system. However, according to CBOE, this functionality will not be available for Hybrid 3.0.

[9] Similar to the existing functionality for manual quotes in non-Hybrid classes, in Hybrid 3.0 the Exchange's disseminated OPRA quote will not distinguish between electronic and manual quotes but members of the trading crowd will be able to distinguish between electronic and manual quotes.

[10] A market participant is defined as a ''Market-Maker, a Remote Market-Maker, an in-crowd DPM or LMM, an e-DPM with an appointment in the subject class, and a floor broker or PAR Official representing orders in the trading crowd.'' *See* CBOE Rule 6.45B.

[11] *See* CBOE Rule 7.4(a)(1).

[12] *Id.*

[13] *See* CBOE Rule 6.8.01.

[14] *See* proposed changes to CBOE Rule 6.13(b)(i)(C)(i). This process is consistent with the appropriate Procedure Committee's ability to permit broker-dealer orders to be automatically executed through the Exchange's Retail Automatic Execution System (''RAES'') in CBOE's non-Hybrid Classes. *See* CBOE Rule 6.8.01.

[15] Even if an order is eligible for book entry, the order entry firm will have the discretion to have the remaining balance of the eligible order route to PAR, BART, or to the order entry firm's booth printer.

[16] *See* CBOE Rule 6.13. By comparison, currently in CBOE's non-Hybrid Classes, orders may be eligible for automatic execution against market maker quotes on RAES. *See* CBOE Rules 6.8 and 24.17. The Exchange represents that the number of trades that occur on RAES is minimal (approximately 1/10th of 1% of all volume occurs on RAES).

[17] *See* proposed changes to CBOE Rule 6.43(b). For example, if the electronic book is a $1.20 bid and the manual quote is at a $1.20 bid, then the system will allow for automatic execution against the $1.20 electronic book bid but not the $1.20 quote. In addition, if the Hybrid 3.0 crowd quote matches the electronic book price, automatic execution against public customer orders in the book is permissible.

Classes, the Exchange will apply similar firm quote surveillance procedures in Hybrid 3.0 to monitor for compliance with members' firm quote obligations.

D. Application of CBOE Rule 6.45B

CBOE Rule 6.45B, which relates to the priority and allocation of trades, will apply to trading in Hybrid 3.0 classes in the same way it is applied to CBOE's existing Hybrid Trading System. For example, multiple customer orders in the electronic book at the same price will be ranked based on time priority pursuant to the priority methods set forth in Rule 6.45B.[18] Further, unlike CBOE's non-Hybrid classes, Hybrid 3.0 will allow (i) Each Market-Maker in the trading crowd and (ii) all floor brokers in the trading crowd (collectively referred to as ''in-crowd market participants'' or ''ICMPs'') to trade against the electronic book pursuant to CBOE Rule 6.45B(c).[19]

CBOE Rule 6.45B(d) currently governs the interaction of quotes when they are locked (*e.g.*, $1.00 bid—1.00 offer). Specifically, CBOE Rule 6.45B(d) provides that when the quotes of two Market-Makers interact (*i.e.*, ''quote lock''), either party has one second during which it may move its quote without obligation to trade with the other party. If, however, the quotes remain locked at the conclusion of one-second, the quotes trade in full against each other. For quote locks in Hybrid 3.0 classes, the appropriate Procedure Committee will set the length of the counting period, provided that the period shall not exceed ten seconds.[20] According to the Exchange, the proposed ten second threshold is intended to provide additional flexibility for Market-Makers to become acclimated with Hybrid 3.0.[21]

Regarding the time periods required for order exposure in Interpretation .01 of Rule 6.45B (''Principal Transactions'') and Interpretation .02 of Rule 6.45B (''Solicitation Orders''), CBOE has proposed a minimum exposure time for Hybrid 3.0 classes, on a class by class basis, to be at least three seconds but not to exceed thirty seconds.[22] According to CBOE, this extended time frame for exposure will provide additional flexibility as ICMPs become more acclimated with Hybrid 3.0.[23]

E. Opening Procedures

Only the DPM or LMM responsible for generating the Hybrid 3.0 crowd quote will be required to enter quotes as part of the opening rotations in Hybrid 3.0 option classes. The DPM or LMM must enter opening quotes in opening rotations that comply with the legal quote width requirements of Rule 8.7(b)(iv), and if there is not a quote present in a series that complies with the legal quote width requirements of Rule 8.7(b)(iv), then that series will not open.[24] Additionally, Hybrid 3.0 will allow public customer, broker-dealer, Exchange Market-Maker, away Marker-Maker and Specialist participation in the opening. Since Hybrid 3.0 is a single quoter environment, these participants will not be permitted to enter opening quotes in opening rotations but will be permitted to directly enter opening orders in opening rotations in Hybrid 3.0 classes.[25] Further, similar to the rules for CBOE's non-Hybrid classes, Hybrid 3.0 also proposes to allow special ''modified'' opening procedures for settlement in options on the Volatility Indexes.[26]

III. Discussion

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[28] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, 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. The proposed rules for Hybrid 3.0 are similar to existing rules applicable to trading in Hybrid and/or non-Hybrid classes. The Commission believes that the proposed rules for the Hybrid 3.0 platform, including those pertaining to quoting, order eligibility in the electronic book, automatic execution, order priority and allocation, are consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change as modified by Amendment Nos. 1 and 2 thereto (File No. SR–CBOE–2006–101) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11366 Filed 6–12–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55873; File No. SR–CBOE–2007–50]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Its Marketing Fee Program

June 7, 2007.

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 May 29, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and

[18] *See* CBOE Rule 6.45B(a)(ii)(A)(1).

[19] This process is the same as for existing Hybrid classes.

[20] *See* proposed changes to CBOE Rule 6.45B(d).

[21] By comparison, the current quote lock timer for Hybrid and Hybrid 2.0 classes may not exceed one second. *See* CBOE Rule 6.45B(d)(i)(C).

[22] *See* proposed changes to CBOE Rule 6.45B.01 and 6.45B.02.

[23] By comparison, the current exposure period for Hybrid and Hybrid 2.0 classes is at least three seconds. *See* CBOE Rule 6.45B.01 and 6.45B.02.

[24] This is consistent with the opening quote requirements in CBOE's existing Hybrid classes that utilize CBOE's Hybrid Opening System (''HOSS''). *See* CBOE Rule 6.2B.

[25] *See* proposed Interpretation .01 to CBOE Rule 6.2B. By comparison, currently in non-Hybrid option classes (such as SPX and OEX), public customers, Market-Makers and broker-dealers are not able to directly participate in the opening rotations (for series that utilize the Exhange's Rapid Opening System). For example, Market-Makers who wish to participate on ROS in the opening rotation in non-Hybrid option classes must submit orders through the LMM at least ten minutes prior to the opening of trading pursuant to CBOE Rules 6.2A and 24.13.

[26] *See* the ''Modified HOSS Opening Procedures'' in proposed Interpretation .01 to CBOE Rule 6.2B. By comparison, non-Hybrid option classes that utilize RAES and ROS have special procedures for purposes of settlement in the volatility indexes called ''Modified ROS Opening Procedures'' pursuant to Interpretation .03 to CBOE Rule 6.2A.

[27] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).