

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62712; File No. SR-CBOE-2010-074]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposal To Extend the Cut-Off Time To Submit Contrary Exercise Advices

August 12, 2010.

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 August 11, 2010, 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 and II 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 the Substance of the Proposed Rule Change

CBOE proposes to amend Rule 11.1 to extend the cut-off time to submit contrary exercise advices. The text of the rule proposal is available on the Exchange's website (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission Public Reference Room.

#### 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to amend Rule 11.1 to extend the cut-off time to submit contrary exercise advices ("Contrary Exercise Advice", or, "CEA")<sup>5</sup> to the Exchange. The Exchange also proposes to make certain non-substantive changes to the text of Rule 11.1 to more clearly present the existing requirements.

The Options Clearing Corporation ("OCC") has an established procedure, under OCC Rule 805, that provides for the automatic exercise of certain options that are in-the-money by a specified amount known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must instruct OCC of their "contrary intention."

In addition to and separate from the OCC requirement, under Exchange Rule 11.1 option holders must file a CEA with the Exchange notifying it of the contrary intention. Rule 11.1 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's timely decision to exercise or not exercise expiring equity options. Trading Permit Holders satisfy this evidentiary requirement by submitting a CEA form directly to the Exchange, or by electronically submitting the CEA to the Exchange through OCC's electronic communications system. The submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to make a contrary exercise was made timely and in accordance with Rule 11.1.

Currently under Rule 11.1, option holders have until 1 hour 28<sup>6</sup> minutes following the time announced for the close of trading on that day on the day prior to expiration to make a final decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised. A Trading Permit Holder may not accept CEA instructions from its customer or non customer accounts after 1 hour 28 minutes. However, the current rule gives Trading Permit Holders an additional one hour, up to 2 hours 28 minutes, to submit these CEA instructions to the Exchange where such Trading Permit Holder uses an electronic submission process.

The Exchange proposes to extend the current deadline for submitting CEA instructions to the Exchange by one additional hour and 2 minutes, up to 3 hours 30 minutes following the time announced for the close of trading on that day for those Trading Permit Holders who use an electronic submission process.<sup>7</sup> The Exchange believes that this proposed rule change is necessary to address concerns expressed by Trading Permit Holders that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the existing deadline for submitting CEAs to the Exchange is problematic for timely back-office processing. The proposed additional one hour and 2 minutes will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange.

It is important to note that this proposed submission deadline does not change the substantive requirement that option holders make a final decision by 1 hour and 30 minutes following the time announced for the close of trading on that day. The Exchange will continue to enforce the cut-off time to submit CEAs, while also allowing additional time to process and submit the CEAs. This proposal seeks to increase that additional submission time by one hour, and the Exchange believes that this proposal will be beneficial to the marketplace, particularly as it concerns back-office processing. The initiative to

<sup>6</sup> CBOE is proposing to amend the current rule relating to the deadline to make a final decision to exercise or not exercise an expiring option from 1 hour 28 minutes to 1 hour 30 minutes following the time announced for the close of trading on that day to make it consistent with the current equity option market close of trading (3:00 p.m. CT). See Securities Exchange Act Release No. 34-53246 (February 7, 2007), SR-CBOE-2005-104, 71 FR 8014 (February 15, 2006) (Order approving proposed change to amend Exchange Rules governing the hours of trading in equity options and narrow-based index options).

<sup>7</sup> That time would be 6:30 P.M. Central Time.

<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).

<sup>5</sup> Contrary Exercise Advices are also referred to as Expiring Exercise Declarations ("EED") in the OCC rules.

address Trading Permit Holder concerns is industry-wide, and the Exchange anticipates that other options exchanges will also propose a one hour extension for which they will accept a CEA.<sup>8</sup> This proposed additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues.

The Exchange is also making a technical change by deleting a misplaced reference to Exchange Rule 11.1(c)3.

If the operative date of this proposed rule change is more than 5 business days prior to the date of the next option expiration Friday ("Expiration Friday"),<sup>9</sup> the Exchange will implement the rule change so as to be effective for that Expiration Friday. If the operative date of this proposed rule change is 5 business days or less prior to the date of the next Expiration Friday, the Exchange will implement the rule change so as to be effective for the following Expiration Friday. CBOE will notify Trading Permit Holders and TPH organizations of the implementation date of the rule change via a Regulatory Circular.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b)<sup>10</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposed rule change will foster coordination with back office personnel engaged in processing information and is consistent with the facilitating of transactions in securities as set forth in Section 6(b)(5) in that it, by providing Trading Permit

Holder an additional hour within which to complete the necessary processing of CEAs, will thereby decrease Trading Permit Holders' burden of processing an increasing number of contrary exercise advices and enable them to more easily manage and process these instructions.

### *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 Regarding 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

Because the foregoing proposed rule change 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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:

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give 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. The Exchange has satisfied this requirement.

### *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-2010-074 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-2010-074. 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 Web site viewing and printing 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-CBOE-2010-074 and should be submitted on or before September 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
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<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>8</sup> See Securities Exchange Act Release No. 34-61710 (March 15, 2010), SR-ISE-2010-02, 75 FR 13636 (March 22, 2010) (order approving proposed change to amend ISE rules related to cut-off time for contrary exercise advice submission).

<sup>9</sup> For example, Expiration Friday for August 2010 options will be August 20, 2010, for Expiration Friday for September 2010 options will be September 17, 2010.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).