

member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.²² CBOE has represented that the design of HOSS, including the new HAL exposure period, ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange and is designed to prevent any Exchange members from gaining any time or place advantages. Based on CBOE's representation, the Commission believes that HOSS, as amended herein, satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to section 11(a) of the Act and Rule 11a2-2(T).²³ CBOE represents that members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.²⁴

²² In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, *supra* note 20.

²³ 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, *supra* note 20 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

²⁴ See e-mail from Jennifer Lamie, Assistant General Counsel, CBOE, to Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, dated July 31, 2008.

Accordingly, for the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-CBOE-2008-30) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58281; File No. SR-CBOE-2008-59]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change to Amend CBOE Rule 8.7 Related to the Obligations of Market-Makers

August 1, 2008.

On June 11, 2008, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 amend CBOE Rule 8.7 (Obligations of Market-Makers). The proposed rule change was published for comment in the *Federal Register* on June 30, 2008.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Exchange recently amended CBOE Rule 8.1 (Market-Maker Defined) to expand the definition of market-maker by including member organizations.⁴ In view of this change, the proposed rule change adds an interpretation to CBOE Rule 8.7 to clarify that the in-person requirements set forth in CBOE Rule 8.7.03B may be satisfied by market-makers either individually or collectively with

market-makers of the same member organization.⁵

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.⁶ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ in that it is designed 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 Commission notes that under the proposal the total amount of transactions that the rule would require to be executed in-person would not change, because a member organization that is registered as a market-maker would have to take into account the transactions of all its individual associated market-makers when determining the total transactions for which it would have to meet the in-person requirements. Further, the proposed rule change helps to ensure a more consistent application of the definition of market-maker within CBOE rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-2008-59) be, and it hereby is, approved.

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

Florence E. Harmon,
Acting Secretary.

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⁵ CBOE Rule 8.7.03B applies to both Hybrid 3.0 and non-Hybrid option classes. Currently, there are three Hybrid 3.0 classes and no non-Hybrid classes.

⁶ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57996 (June 20, 2008), 73 FR 36937.

⁴ See Securities Exchange Act Release No. 57615 (April 3, 2008), 73 FR 19537 (April 10, 2008) (SR-CBOE-2007-120).