

governing documents.<sup>31</sup> Moreover, as the ROC would continue to be composed solely of Non-Industry Directors, the Commission does not believe C2's proposal to decreased size of the committee compromises its ability to monitor the adequacy and effectiveness of C2's regulatory program. Finally, the Commission believes that a new voting agreement, as proposed by C2, is appropriate to ensure that C2 meet its statutory obligation to provide for the fair representation of its members in the administration of C2.<sup>32</sup> As the Commission has previously noted in the context of other exchange governance proposals, this requirement helps to ensure that an exchange's members have a voice in the governing body of the exchange and the corresponding exercise by the exchange of its self-regulatory authority, and that the exchange is administered in a way that is equitable to all who trade on its market or through its facilities.<sup>33</sup>

### III. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule changes in connection with the transfer of ownership of C2 from CBOE to CBOE Holdings is consistent with the Act and that C2 will be so organized and have the capacity to be able to carry out the purposes of the Act. The provisions in the applicable governing documents, discussed above, should minimize the potential that any person could interfere with or restrict the ability of C2 or the Commission to effectively carry out their respective regulatory oversight responsibilities. Further, the Commission notes that CBOE Holding has undertaken to ensure and maintain the regulatory independence of C2 to enable C2 to operate in a manner that complies with the federal securities laws, including the objectives of Sections 6(b) of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR-C2-2010-002) be, and it hereby is, approved.

<sup>31</sup> See, e.g., Section 7 of the Amended and Restated By-Laws of BATS Exchange, Inc. and Section 7 of the Amended and Restated Bylaws of EDGX Exchange, Inc.

<sup>32</sup> Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3).

<sup>33</sup> See, e.g., Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (File No. 10-131); 53382 (February 27, 2006), 71 FR 11251, 11259 (March 6, 2006) (File No. SR-NYSE-2005-77); and 58375 (August 18, 2008), 73 FR 49498, 49501 (August 21, 2008) (File No. 10-182).

<sup>34</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62317; File No. SR-CBOE-2010-038]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Related to the Hybrid Matching Algorithms

June 17, 2010.

On April 22, 2010, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to revise its market turner and modified participation entitlement priority overlays. On May 6, 2010, CBOE filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 18, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

CBOE 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) set forth, among other things, the manner in which incoming electronic orders in options are allocated on the Hybrid System. Each rule currently provides allocation algorithms the Exchange can utilize when executing incoming electronic orders, including the Ultimate Matching Algorithm ("UMA"), and price-time and pro-rata priority allocation algorithms. The price-time and pro-rata priority overlays currently include: public customer priority for public customer orders resting on the Hybrid System; participation entitlements for certain qualifying market-makers (the "original

<sup>35</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 62083 (May 12, 2010), 75 FR 27850.

participation entitlement(s)"); a market turner priority for participants that are the first to improve CBOE's disseminated quote; and a modified participation entitlement overlay<sup>4</sup> in which the original participation entitlement would apply only if there are no public customer orders resting at the best price or a public customer was the first to rest interest at the best price. In addition, a small order participation entitlement overlay for Designated Primary Market-Makers ("DPMs") and Lead Market-Makers ("LMMs") can be applied to each of the three allocation algorithms (*i.e.*, price-time, pro-rata or UMA).<sup>5</sup> These overlays are all optional.

The proposed rule change would amend the Exchange's priority overlays. CBOE proposes to make the market turner overlay available for classes utilizing any of the priority methods offered by the Exchange. The Exchange also proposes to amend the application of the modified participation entitlement overlay. Under the proposal, a Market-Maker that is the subject of a participation entitlement would only receive an entitlement if the amount it is entitled to pursuant to the participation entitlement is greater than the amount the Market-Maker would otherwise receive pursuant to the algorithm. In all other cases, the participation entitlement and public customer priority would not be applied. This allocation would be subject to the following:

- The Market-Maker's entitlement share would be calculated based on any remaining balance after all public customer orders at the best price are satisfied. For options classes using the pro-rata method, the Exchange may determine on a class-by-class basis to calculate the Market-Maker's entitlement share using the UMA methodology or the pro-rata methodology. For options classes using the price-time method, the Market-Maker's entitlement share would be calculated using the price-time methodology only.<sup>6</sup>

<sup>4</sup> Securities Exchange Act Release No. 60665 (September 14, 2009), 74 FR 48114 (September 21, 2009) (SR-CBOE-2009-052).

<sup>5</sup> If the small order priority overlay is in effect for an option class, then orders for five (5) contracts or fewer will be executed first by the DPM or LMM, as applicable, appointed to the option class. This participation entitlement is subject to certain conditions, including a condition that public customer priority must be in effect in priority sequence ahead of the participation entitlement. See Rules 6.45A(a)(iii) and 6.45B(a)(iii).

<sup>6</sup> This modified participation entitlement overlay would only be applicable to automatic executions and would not be applicable for executions of incoming electronic orders initiated from PAR or from electronic auctions. Instead, the original

• When calculating the amount the Market-Maker would otherwise receive pursuant to the operation of the algorithm, the participation entitlement and public customer priority overlays would not be considered. Instead the calculation would be based on a price-time or pro-rata basis, as applicable, and subject to any other applicable priority overlays, such as market turner priority.

In addition, the Exchange proposes that the modified participation entitlement overlay would be available to modify the application of the small order participation entitlement.

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; as well as Section 6(b)(8) of the Act, which requires the rules of an exchange not to impose any burden on competition not necessary or in furtherance of the Act.<sup>9</sup>

The Commission believes that the proposed rule change amending the market turner and modified participation entitlement overlays is consistent with the Act. All public customer orders at the best price will continue to be satisfied before a participation entitlement will be applied. If an entitlement is not applied, then the incoming order will be allocated among all market participants using the underlying matching algorithm—price-time or pro-rata—both of which the Commission already has

participation entitlement parameters would be applied for PAR and electronic auctions. In pro-rata classes where the UMA method is selected to calculate the Market-Maker's modified participation entitlement share, executions of incoming electronic orders initiated from PAR and electronic auctions would be allocated using the UMA method. Therefore, in such classes, the Market-Maker's original participation entitlement share of a PAR or electronic auction execution would be calculated using the UMA method.

<sup>7</sup> 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).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

found consistent with the Act.<sup>10</sup> In addition, the Exchange's overlay determinations will be distributed via regulatory circular. For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2010-038), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62322; File No. SR-MSRB-2010-04]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Discontinuation of the MSRB Public Access Facility

June 17, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 14, 2010, the Municipal Securities Rulemaking Board ("MSRB"), 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 prepared by the MSRB. The MSRB has filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 MSRB has filed with the Commission a proposed rule change

<sup>10</sup> See Securities Exchange Act Release No. 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (Adopting CBOE Rule 6.45B).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<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)(3).

relating to its public access facility and access to printed copies of certain documents made available by the MSRB to the public.

The text of the proposed rule change is available on the MSRB's Web site at <http://www.msrb.org/msrb1/sec.asp>, at the MSRB's principal office, and at the Commission's 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 MSRB 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 MSRB 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

The proposed rule change would (a) terminate the public access facility created under the MSRB's Municipal Securities Information Library ("MSIL") system<sup>5</sup> and (b) revise a related Rule G-37 interpretive Question & Answer to delete a reference to the public access facility. The public access facility is physically located at the offices of the MSRB and makes official statements and advance refunding documents available to the public for viewing and photocopying. Over the years, the MSRB has undertaken to make other items available through the public access facility including, but not limited to, copies of Forms G-37, G-37x and G-38t, certain transaction data and comment letters received in connection with requests for comment. All current information that is accessible to the public through the public access facility is now readily accessible through the MSRB Web site or the EMMA Web site. Accordingly, the MSRB will discontinue the public access facility but will retain the ability to provide photocopies of the documents for members of the public without Internet access, upon written

<sup>5</sup> The MSIL system, originally established by the MSRB in 1990 to collect official statements and advance refunding documents, was discontinued for purposes of accepting submissions of such documents upon the establishment by the MSRB of its Electronic Municipal Market Access (EMMA) System's Primary Market Disclosure Service. The MSIL system continues to operate in a limited capacity for internal MSRB purposes only.