UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
TRADING AND MARKETS

August 28, 2009

Edward J. Joyce
President and Chief Operating Officer
Chicago Board Options Exchange, Inc.
400 South LaSalle Street
Chicago, IL 60605-1023

Re: Chicago Board Options Exchange's Request under Rule 608(e) of Regulation NMS for a Temporary Exemption from Certain Provisions of the Options Order Protection and Locked/Crossed Market Plan

Dear Mr. Joyce:

Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act") provides that the Securities and Exchange Commission ("Commission") may exempt from the provisions of Rule 608 of Regulation NMS, either unconditionally or on specified terms and conditions, any self-regulatory organization, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and perfection of the mechanisms of, a national market system.[1] As discussed below, the Commission is exempting the Chicago Board Options Exchange, Inc. ("CBOE") from Rule 608(c) of Regulation NMS, which requires CBOE to comply with, and enforce compliance by its members with, certain provisions of the Options Order Protection and Locked/Crossed Market Plan ("Plan").[2]

Exemption from Section 8(c) of the Linkage Plan

In the Exchange's letter, dated August 27, 2009, CBOE seeks an exemption from Rule 608(c) of Regulation NMS, which requires CBOE to comply with, and enforce compliance by its

1 17 CFR 242.608. The Division of Trading and Markets has delegated authority to grant an exemption pursuant to 17 CFR 200.30-3(a)(42).

2 The Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Rule 608 of Regulation NMS. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009). All capitalized terms used in this letter have the same meaning as in the Plan, unless otherwise specified.

members with, the terms of the Plan regarding Trade-Throughs.[3] Specifically, CBOE requests that the Commission, pursuant to Rule 608(e) of Regulation NMS, exempt CBOE from the requirement of Rule 608(c) of Regulation NMS that CBOE comply, and enforce compliance by its members, with Section 5(a) of the Plan subject to certain conditions. Section 5(a) of the Plan provides that each Participant shall establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that Participant's market that do not fall within an exception set forth in Section 5(b). CBOE has requested an exemption to allow it to effect transactions that Trade Through the NBBO by one minimum quoting increment if such transactions are effected in connection with the simultaneous routing of P/A Orders or Principal Orders[4] to other Participants of the Plan that can execute against the full displayed size of all Participants that are disseminating a better price than CBOE.

CBOE has requested that the exemption be granted through October 16, 2009. Further, CBOE has represented that it would continue to financially support the OCC hub consistent with our contractual obligations with OCC for any time period that CBOE utilizes the hub.

Response to Request for Exemption

On the basis of the representations and facts presented in your letter, the Commission grants an exemption to CBOE from the requirement in Rule 608(c) of Regulation NMS that CBOE comply, and enforce compliance by its members, with Section 5(a) of the Plan, provided that: (1) the transaction that constitutes a Trade-Through is at a price only one minimum quoting increment lower than a Protected Bid or one minimum increment higher than a Protected Offer; and (2) CBOE simultaneously routes a P/A or Principal Order that can execute against the full displayed size of all Participants that are disseminating a better price than CBOE.

The Commission finds that it is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and

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3 A "Trade-Through" is defined in Section 2(21) of the Plan as "a transaction in an options series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer."

4 P/A Orders and Principal Orders are order types provided for by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage. A P/A order is an order sent through the routing hub operated by the Options Clearing Corporation ("OCC Hub") on behalf of a non-broker-dealer customer. A Principal Order is an order sent through the OCC Hub for the principal account of an exchange market maker.

perfection of the mechanisms of, a national market system to grant the exemption described above because it will help the Exchange ensure that an orderly transition is achieved on CBOE to the Plan's new structure without undermining the objectives of the Plan.

This exemption is conditioned solely on the facts and representations presented in your letter. In the event that any material change occurs with respect to any of the facts or representations presented, the exemption will expire and CBOE must immediately resume operating in accordance with all provisions of the Plan. The exemption will otherwise expire on October 16, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,[5]

Elizabeth K. King

Elizabeth K. King
Associate Director

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[5] 17 CFR 200.30-3(a)(42).

CBOE
CHICAGO BOARD OPTIONS EXCHANGE

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August 27, 2009

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AUG 28 2009
OFFICE OF THE SECRETARY

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request under Rule 608(e) of Regulation NMS for a Temporary Exemption from Certain Provisions of the Options Order Protection and Locked/Crossed Market Plan

Pursuant to Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act"), the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") requests that the Securities and Exchange Commission ("SEC" or "Commission") grant CBOE a limited exemption to Section 5(a) of the Options Order Protection and Locked/Crossed Market Plan (the "Plan" or "New Plan").

Commission's Exemptive Authority

Rule 608(e) of Regulation NMS authorizes the Commission to issue exemptions from the provisions of Rule 608. In particular, Rule 608(e) provides:

> The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization... if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

17 CFR 242.608(e). The Plan is an effective national market system plan pursuant to Rule 608 of Regulation NMS, and the Exchange is a participant in the Plan. Rule 608(e) of Regulation NMS authorizes the Commission to issue an exemption to the Exchange from Rule 608(c), which requires the Exchange to comply with and to enforce compliance by the Exchange's members with the terms of the Plan.[1]

[1] Rule 608(c) requires each self-regulatory organization to "comply with the terms of any national market system plan of which it is a sponsor or a participant [, and] absent reasonable justification or excuse, enforce compliance with any such plans by its members." 17 CFR 242.608(c).

Background

The Plan is a Commission approved national market system plan adopted by all of the current U.S. options exchanges (the "Participants") to provide a framework for order protection and locked and crossed market handling. The Plan replaces the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Old Plan"). The Old Plan also provided a framework for addressing order protection and locked/crossed markets, but unlike the New Plan, the Old Plan utilized the Options Clearing Corporation as a "hub" for the transmission of linkage orders between exchanges. There are three types of linkage orders under the Old Plan, P/A Orders (orders sent on behalf of a non-broker dealer customer), P Orders (orders send for the principal account of an exchange market-maker), and Satisfaction Orders (orders reflecting the terms of an order resting on an exchange that was traded-through by another market).

Under the New Plan, it is anticipated that Participants would access other Participants directly and not through a hub (i.e. through members that can provide "front-door" access). CBOE is a signatory to the New Plan, but in order to assure a controlled and orderly migration from the Old Plan to the New Plan, CBOE will continue to route PA and P orders to other Participants through the OCC hub for a limited period of time after CBOE and the other Participants have withdrawn from the Old Plan. As soon as the New Plan is operational, CBOE will begin to accept Intermarket Sweep Orders ("ISOs") in all multiple-list classes as required by the New Plan. However, CBOE will not conduct a "big bang" transition to the New Plan in terms of routing ISOs to other Participants to access their better-price quotations. Instead, CBOE intends to initially use ISOs for outbound routing for a few option classes. Assuming CBOE's outbound ISO routing systems are functioning properly, the Exchange will transition to ISO routing for all remaining classes over a period of several weeks. Until the transition is complete, CBOE will route PA and P orders to other Participants (in classes that have not migrated to outbound ISO routing functionality) in accordance with CBOE's Temporary Rule 6.83 (Phase Out of Intermarket Linkage Rules).

The Exchange notes that all of the Participants are adopting temporary rules to accommodate the receipt of P and PA orders from Exchanges that have not fully transitioned to New Plan ISO routing functionality. Those P and PA orders would be processed consistent with the requirements of the Old Plan. Thus, there may be instances where CBOE routes a P or PA order to a Participant disseminating the NBBO concurrent with an execution at CBOE's non-NBBO price. While this action would be deemed trade-through exempt under the Old Plan, it is not exempt under the New Plan because the New Plan does not contemplate the use of P and PA orders.

Provision of the Plan Requiring Exemption

Section 5(a) of the Plan, Order Protection, provides that each Participant shall establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that Participant's market that do not fall within an exception set forth in Section 5(b). While Section 5(b) contains many of the same exceptions as the exceptions in the Old Plan, the routing of PA and P orders is not listed.

Exemption Request

CBOE respectfully requests, pursuant to Rule 608(e) of Regulation NMS, relief from the requirement of Rule 608(c) of Regulation NMS that the Exchange comply with and enforce compliance by its members with the requirements of Section 5(a) of the Plan for "trade-through" executions one minimum quoting increment inferior to the NBBO on CBOE that are effected in connection with the simultaneous routing of PA or P orders to other Participants that can execute against the full displayed size of all Participants that are disseminating a better price than CBOE (*i.e.* the NBBO). We request that the exemption be granted through October 16, 2009. We represent that we would continue to financially support the OCC hub consistent with our contractual obligations with OCC for any time period that CBOE utilizes the hub.

The exemption of the Exchange request satisfies the requirements of Rule 608(e) of Regulation NMS, in that the exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of the mechanisms of, a national market system. Specifically, the Exchange believes that such an exemption would help the Exchange ensure that an orderly transition is achieved on CBOE from the Old Plan order-routing structure to the New Plan structure without undermining the objectives of the New Plan.

For the foregoing reasons, the Exchange respectfully requests that the Commission grant an exemption to the Exchange from Rule 608(c) of Regulation NMS, which requires the Exchange to comply with and enforce compliance with, section 5(a) of the Plan, under the terms and conditions specified above. If you have any questions or concerns, please contact Angelo Evangelou at 312-786-7464.

Sincerely,

Edward J Joy

cc: David Liu
Jennifer Colihan