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

DIVISION OF
TRADING AND MARKETS

October 29, 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] On August 27, 2009, the Commission granted the Chicago Board Options Exchange, Inc. ("CBOE") a temporary exemption, through October 16, 2009, 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"). On October 16, 2009, the Commission granted an extension of the exemption through October 30, 2009, subject to the same conditions set forth in the Commission's August 27, 2009 exemption.

In your letter dated October 28, 2009, CBOE requests that the Commission extend the temporary exemption to allow CBOE to complete its transition to use of Intermarket Sweep Order for outbound routing in all classes. CBOE represents that it will continue to financially support the OCC Hub consistent with its contractual obligations with OCC for any time period that CBOE utilizes the Hub.

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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).

On the basis of the representations and facts presented in your letter, the Commission grants an extension of the exemption until December 31, 2009, subject to the conditions set forth in the Commission's August 27, 2009 exemption.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,[2]

Elizabeth K. King

Elizabeth K. King
Associate Director

[2] 17 CFR 200.30-3(a)(42).

CBOE
CHICAGO BOARD OPTIONS EXCHANGE

Edward J. Joyce
President and
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October 28, 2009

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

Re: Extension of Temporary Exemption from Certain Provisions of the Options Order Protection and Locked/Crossed Market Plan

On August 27, 2009, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") requested that the Securities and Exchange Commission ("SEC" or "Commission") grant, pursuant to Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act"), CBOE a limited exemption to Section 5(a) of the Options Order Protection and Locked/Crossed Market Plan (the "Plan" or "New Plan"). The Commission subsequently granted CBOE's request. On October 13, 2009, CBOE sought an extension of the exemption Through October 30, 2009. That request was also granted. This letters seeks to extend the temporary exemption again, this time through December 31, 2009.

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

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, Participants 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 and currently accepts inbound Intermarket Sweep Orders ("ISOs") in all multiple-list classes as required by the New Plan. However, in order to assure a controlled and orderly migration from the Old Plan to the New Plan, CBOE did not conduct a "big bang" transition to the New Plan in terms of routing outbound ISOs to other Participants to access their better-price quotations. Instead, CBOE initially began using ISOs for outbound routing for a few option classes. As the rollout progressed, CBOE encountered certain technical problems that caused the Exchange to revert to routing through the OCC hub. CBOE has identified and is correcting the problems and will resume the full transition to ISO routing shortly. Until the full 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 adopted 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 are 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.

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justification or excuse, enforce compliance with any such plans by its members." 17 CFR 242.608(c).

Exemption Request

CBOE respectfully requests an extension of the relief previously granted to the Exchange 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 extended through December 31, 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.

We believe the exemption satisfies the requirements of Rule 608(e) of Regulation NMS, in 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 the perfection of the mechanisms of, a national market system. Specifically, the Exchange believes that such an exemption would help the Exchange ensure a continued orderly transition 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 extend the exemption 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 Joyce

cc: David Liu
Jennifer Colihan