

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No.\* SR - 2010 - \* 114

Amendment No. (req. for Amendments \*)

Proposed Rule Change by Chicago Board Options Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document  
Exhibit 3 Sent As Paper Document  
**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

The Exchange is proposing to modify Rule 6.2B, Hybrid Opening System ("HOSS"), in various respects.

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \* Jennifer Last Name \* Lamie  
 Title \* Assistant General Counsel  
 E-mail \* lamie@cboe.com  
 Telephone \* (312) 786-7576 Fax (312) 786-7919

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 12/08/2010

By Jennifer M. Lamie

(Name \*)

Assistant Secretary

(Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Jennifer.Lamie.lamie@cboe.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of Proposed Rule Change

(a) The Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) proposes to modify Rule 6.2B, Hybrid Opening System (“HOSS”). The text of the proposed rule change is provided below (additions are underlined and deletions are [bracketed]).

\* \* \* \* \*

Chicago Board Options Exchange, Incorporated  
Rules

\* \* \* \* \*

## Rule 6.2B - Hybrid Opening System (“HOSS”)

RULE 6.2B. (a) Pre-Opening Period: For a period of time before the opening of trading in the underlying security [(or, in the case of index options, prior to 8:30 a.m. (all times are CT))], (as determined by the Exchange on a class-by-class basis) [and announced to the Trading Permit Holders via Regulatory Circular], the [Hybrid] System will accept orders and quotes.

(i) The Exchange shall designate the eligible order size, eligible order type and eligible order origin code (i.e. public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders) that the System will accept on a class-by-class basis.

(ii) At specified intervals of time that will be announced to [the] Trading Permit Holders, the [Hybrid] System will disseminate to market participants (as defined in Rule 6.45A or 6.45B) information about resting orders in the Book that remain from the prior business day and any orders and quotes submitted before the opening, including the expected opening price (“EOP”) and expected opening size (“EOS”) given the current resting orders and quotes. The EOP is the price at which the greatest number of orders and quotes in the Book are expected to trade. An EOP may only be calculated if: (i) there are market orders in the Book, or the Book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals the lowest offer), and (ii) at least one quote is present. [Spread orders and contingency orders do not participate in the opening trade or in the determination of the opening price, EOP or EOS.]

(b) Opening Rotation Notice: Unless unusual circumstances exist[s], at a randomly selected time within a number of seconds after the opening trade and/or the opening quote is disseminated in the market for the underlying security (or after 8:30 a.m. for index options), the System initiates the opening rotation procedure and sends a notice (“Rotation Notice”) to market participants. For purposes of this paragraph, the “market for the underlying security” (as determined by the Exchange on a class-by-class basis) shall be either the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), or the first market to open the

underlying security[, as determined by the Exchange on a class-by-class basis and announced to the Trading Permit Holders via Regulatory Circular].

(i) [Whether t]The Rotation Notice will be sent following the opening trade and/or opening quote [(or whichever occurs first)] (as [will be] determined [on a class basis] by the Exchange on a class-by-class basis) [and announced to the Trading Permit Holders via Regulatory Circular].

(ii) In the event an underlying security has not opened within a reasonable time after 8:30 a.m. [(CT)], the DPM or LMM, as applicable, acting in option contracts on such security shall report the delay to a Floor Official and an inquiry shall be made to determine the cause of the delay. The opening rotation for option contracts in such security shall be delayed until the underlying security has opened unless two Floor Officials determine that the interest of a fair and orderly market are best served by opening trading in the option contracts. However, in the particular event where the underlying security has not opened within a reasonable time after 8:30 a.m. [(CT)] and the DPM or LMM believes the delay is because the market for the underlying security has not reported an opening trade in the underlying security but has disseminated opening quotations and not given an indication of a delayed opening, the DPM or LMM shall instead report the delay directly to the Exchange's Control Room. Following such report by the DPM or LMM to the Control Room, or following notification by the Control Room to the DPM or LMM of such an event, the senior official in the Control Room may authorize the initiation of the opening rotation process in the affected option class where necessary to ensure a fair and orderly market.

(c) Opening Rotation Period: After the Rotation Notice is sent, the System will enter into a Rotation Period, during which the opening price will be established for each series.

(i) During the Rotation Period, the System will continue to calculate and provide the EOP and EOS given the current resting orders and quotes.

(ii) The System will process the series of a class in a random order and the series will begin opening after a period following the Rotation Notice. (This period, which shall not exceed sixty seconds, will be established on a class-by-class basis by the Exchange) [and announced to the Trading Permit Holders via Regulatory Circular].

(iii) Prior to the expiration of this period, the System will not open a series unless opening quotes that comply with the bid/ask differential requirements (as determined by the Exchange on a class-[ ]by-[ ]class basis) have been entered by at least one Maker-Maker appointed to the class (or by the DPM or LMM, as determined [on a class-by-class basis] by the Exchange on a class-by-class basis [and announced to the Trading Permit Holders via Regulatory Circular]).

(iv) The opening price of a series is the "market-clearing" price that will leave bids and offers which cannot trade with each other. In determining the priority of orders and quotes to be traded, the System gives priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price. One or more series of a class may not open because of conditions cited in paragraph (e) of this Rule.

(d) Opening Quote and Trade Price: As the opening price is determined by series, the System will disseminate through OPRA the opening quote and the opening trade price, if any.

(e) Opening Conditions: The System will not open a series if one of the following conditions is met:

(i) There is no quote present in the series as provided in paragraph (c)(iii).

(ii) The opening price is not within an acceptable range (as determined by the Exchange [and announced to the Trading Permit Holders via Regulatory Circular]) compared to the lowest quote offer and the highest quote bid; or

(iii) The opening trade would leave a market order imbalance (*i.e.*, there are more market orders to buy or to sell for the particular series than can be satisfied by the limit orders, quotes and market orders on the opposite side); however, in series that will open at a minimum price increment (e.g., at a price of \$0.05 or, in penny series, at a price of \$0.01), the System will open even if a sell market order imbalance exists.

[(f)] If the condition in paragraph (e)(i) or (e)(ii) [of this Rule] is present, the senior official in the Control Room may authorize the opening of the affected series where necessary to ensure a fair and orderly market. If the condition in paragraph (e)(ii) [of this Rule] is present, the System will not open the series but will send a notification to market participants indicating the reason. When the condition in (e)(iii) is present, a notification will be sent to market participants indicating the size and direction (buy or sell) of the market order imbalance. The System will not open the series until the condition causing the delay is satisfied. The System will repeat this process until the series is open.

[(g)] (f) Floor Officials: Two Floor Officials may deviate from the standard manner of the opening procedure, including delaying the opening in any option class, when necessary in the interests of maintaining a fair and orderly market.

[(h)] (g) Trading Halts: The procedure described in this Rule may be used to reopen a class after a trading halt.

[(i)] (h) Closing Rotation Procedure. The decision whether to employ a closing rotation in a series trading on the HOSS is governed by this paragraph [(i)] (h) and not Interpretations and Policies .02, .03 or .05 of Rule 6.2. The procedure described in this Rule may be employed after the end of the normal close of any trading session whenever the Exchange concludes that such action is appropriate in the interests of a fair and orderly market. The factors that may be considered in holding a closing rotation procedure include, but are not limited to, whether there has been a recent opening or reopening of trading in the underlying security, a declaration of a fast market, or a need for a closing procedure in connection with expiring individual security options, an end of the year procedure, or the restart of a procedure which is already in progress. The decision to employ a closing rotation procedure shall be disseminated prior to the commencement of such procedure.

. . . *Interpretations and Policies:*

.01 Modified Opening Procedure for Hybrid 3.0 Classes: Notwithstanding [P]paragraph (a), for purposes of Hybrid 3.0 [C]classes, the following shall apply:

(a) Only the DPM or LMM will be required to enter opening quotes in opening rotations. Public customers, broker-dealers, Exchange Market-Makers, away Marker-Makers and Specialists will not be permitted to enter opening quotes but may enter opening orders in opening rotations.

(b) The DPM or LMM must enter opening quotes that comply with the bid/ask differential requirements determined by the Exchange on a class-[ ]by-[ ]class basis. If there is not a quote present in a series that complies with the bid/ask differential requirements established by the Exchange, then that series will not open.

(c) All provisions set forth in Rule 6.2B shall remain in effect unless superseded or modified by this Rule 6.2B.01. To facilitate the calculation of a settlement price for futures and options contracts on volatility indexes, the Exchange shall utilize a modified HOSS opening procedure for any Hybrid 3.0 index option series with respect to which a volatility index is calculated. This modified HOSS opening procedure will be utilized only on the final settlement date of the options and futures contracts on the applicable volatility index in each expiration month.

On the final settlement day for options and futures on a volatility index, public customers, broker-dealers, Exchange Market-Makers, away Market-Makers and Specialists may enter orders in any index options series used to calculate the final settlement price of that volatility index ("modified HOSS opening procedures"). The following provisions shall be applicable for an index option with respect to which a volatility index is calculated:

(i) All orders (including public customer, broker-dealer, Exchange Market-Maker, away Market-Maker and Specialist orders), other than spread or contingency orders, will be eligible to be placed on the electronic book for those option contract months whose prices are used to derive the volatility indexes on which options and futures are traded, for the purpose of permitting those orders to participate in the opening price calculation for the applicable index option series.

(ii) In addition to the LMM quoting requirement, all LMMs, if applicable, shall be required to enter opening orders during the modified HOSS opening procedures.

(iii) All index option orders for participation in the modified HOSS opening procedure that are related to positions in, or a trading strategy involving, volatility index options or futures, and any change to or cancellation of any such order:

(A) must be received prior to the applicable strategy order cut-off time for the affected index option series (established by the Exchange on a class-by-class basis), provided that the strategy order cut-off time will be no earlier than 8:00 a.m. [(CT)] and no later than the opening of trading in the option series. All pronouncements regarding changes to the applicable strategy order cut-off time will be announced [to the Trading Permit Holders via Regulatory Circular that is issued] at least one day prior to implementation.

(B) may not be cancelled or changed after the applicable strategy order cut-off time established in accordance with paragraph (A), unless the order is not executed in the modified HOSS opening procedure and the cancellation or change is submitted after the modified HOSS opening procedure is concluded (provided that any such order may be changed or cancelled after the applicable strategy order cut-off time established in accordance with paragraph (A) and prior to applicable cut-off time established in accordance with paragraph (iv) in order to correct a legitimate error, in which case the Trading Permit Holder submitting the change or cancellation shall prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and shall file a copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange).

In general, the Exchange shall consider index option orders to be related to positions in, or a trading strategy involving, volatility index options or futures for purposes of this Rule 6.2B.01(c) if the orders possess the following three characteristics:

(1) The orders are for options series with the expiration month that will be used to calculate the settlement price of the applicable volatility index option or futures contract.

(2) The orders are for options series spanning the full range of strike prices in the appropriate expiration month for options series that will be used to calculate the settlement price of the applicable volatility index option or futures contract, but not necessarily every available strike price.

(3) The orders are for put options with strike prices less than the “at-the-money” strike price and for call options with strike prices greater than the “at-the-money” strike price. The orders may also be for put and call options with “at-the-money” strike prices.

Whether index option orders are related to positions in, or a trading strategy involving, volatility index options or futures for purposes of this Rule 6.2B.01(c) depends upon specific facts and circumstances. Order types other than those provided above may also be deemed by the Exchange to fall within this category of orders if the Exchange determines that to be the case based upon the applicable facts and circumstances.

The provisions of this Rule 6.2B.01(c) may be suspended by two Floor Officials in the event of unusual market conditions.

(iv) All other index option orders for participation in the modified HOSS opening procedures, and any change to or cancellation of any such order, must be received prior to the applicable cut-off time in order to participate at the opening price for the applicable index option series. The applicable cut-off time for the affected index option series will be established by the Exchange on a class-by-class basis, provided the cut-off time will be no earlier than 8:25 a.m. [(CT)] and no later than the opening of trading in the option series. All pronouncements regarding changes to the applicable cut-off time will be announced [to the Trading Permit Holders via Regulatory Circular that is issued] at least one day prior to implementation.

(v) The HOSS system shall automatically generate cancels immediately prior to the opening of the applicable index option series for broker-dealer, Exchange Market-Maker, away Market-Maker, and Specialist orders which remain on the electronic book following the modified HOSS opening procedures.

(vi) Any imbalance of contracts to buy over contracts to sell in the applicable index option series, or vice versa, as indicated on the electronic book, will be published as soon as practicable up through the opening bell on days that the modified HOSS opening procedures is utilized.

*.02 Market-Maker Quotes:* The initial size of a Market-Maker’s opening quote must be for the minimum number of contracts determined by the Exchange on a class-[ ]by-[ ]class basis, which minimum shall be at least one contract. For purposes of this paragraph, the term “Market-Maker” includes a DPM, e-DPM, LMM, or Market-Maker.

*.03 HAL Opening Procedure:* This Interpretation and Policy governs the operation of the Hybrid Agency Liaison (“HAL”) for openings. The Exchange shall designate the classes in which HAL or HAL2 shall be activated for openings. The Exchange shall also determine on a class-by-class basis the exposure period (which period of time shall not exceed 1.5 seconds) and allocation period (which period of time, when combined with the designated exposure time period (as opposed to an exposure period that is terminated early), shall not exceed a

total of 3 seconds). For such classes, the following procedures shall apply in lieu of paragraph[s] (e) [and (f)] above.

(a) Subject to paragraph (b) below, the System will not open a series if one of the following conditions is met:

- (i) There is no quote present in the series as provided in paragraph (c)(iii);
- (ii) The opening price is not within an acceptable range (as determined by the Exchange [and announced to the Trading Permit Holders via Regulatory Circular]) compared to the lowest quote offer and the highest quote bid;
- (iii) The opening trade would be at a price that is not the NBBO; or
- (iv) The opening trade would leave a market order imbalance (i.e., there are more market orders to buy or to sell for the particular series than can be satisfied by the limit orders, quotes and market orders on the opposite side).

(b) (i) If the condition in paragraph (a)(i) of this Interpretation and Policy is present, the System will check to see if there is an NBBO quote on another market that falls within the acceptable opening range. If such an NBBO quote is present, the series will open and expose the marketable order(s) at the NBBO price. If such an NBBO quote is not present, the System will not open the series and will send a notification to market participants indicating the reason.

(ii) If the condition in paragraph (a)(ii) of this Interpretation and Policy is present, the System will match orders and quotes to the extent possible and report the opening trade, if any, at a single clearing price within the acceptable range, then expose the remaining marketable order(s) at the widest price point within the acceptable opening range or the NBBO price, whichever is better.

(iii) If the condition in paragraph (a)(iii) of this Interpretation and Policy is present, the System will match orders and quotes to the extent possible and report the opening trade, if any, at a single clearing price within the acceptable opening range or the NBBO price, whichever is better, then expose the remaining marketable order(s) at the NBBO price.

(iv) If the condition in paragraph (a)(iv) of this Interpretation and Policy is present, the System will match orders and quotes to the extent possible and report the opening trade, if any, at a single clearing price, then expose the remaining marketable order(s) at the widest price point within the acceptable opening range or the NBBO price, whichever is better.

(c) For purposes of this Interpretation and Policy:

(i) In determining the priority of orders and quotes to be traded on the opening trade or through the subsequent exposure process, the System gives priority to [public customer] market orders first [(with multiple orders ranked based on time priority), then to non-public customer market orders second (with multiple orders being ranked based on time priority),] then to limit orders and quotes whose price is better than the opening price [(with multiple orders and quotes being ranked in accordance with the allocation algorithm in effect for the option class pursuant to Rule 6.45A or 6.45B)], and then to limit orders and quotes at the opening price [(with multiple orders and quotes being ranked in accordance with the allocation algorithm in effect for the option class pursuant to Rule 6.45A or 6.45B)].

(ii) The exposure process will be conducted either via HAL pursuant to Rule 6.14 or HAL2 pursuant to Rule 6.14A, as determined by the Exchange. In addition, for all classes, any remaining balance of opening contingency orders not executed via HAL/HAL2 on the opening will be automatically cancelled. For single list classes, any remaining balance of

marketable orders (other than opening contingency orders) not executed via HAL/HAL2 on the opening will route as determined by the Exchange on a class-by-class basis to PAR[, BART,] or, at the order entry firm's discretion, to the order entry firm's booth [printer].

.04 Allocation Algorithm: The Exchange may determine on a class-by-class basis which electronic allocation algorithm from Rule 6.45A or 6.45B, as applicable, shall apply to rotations. The Exchange may determine to apply a separate electronic allocation algorithm for series that open at a minimum price increment due to a sell market order imbalance.

.05 Exchange Determinations: All pronouncements regarding determinations by the Exchange pursuant to Rule 6.2B and the Interpretations and Policies thereunder will be announced to Trading Permit Holders via Regulatory Circular.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(1) The proposed rule change was approved by the Exchange's Office of the Chairman pursuant to delegated authority on November 11, 2010.

(2) Questions and comments on the proposed rule change may be referred to Joanne Moffic-Silver, General Counsel, CBOE, 400 South LaSalle Street, Chicago, Illinois 60605; Telephone: (312) 786-7462; Fax: (312) 786-7919 or Jennifer Lamie at 312-786-7576.

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

HOSS is a feature within CBOE's Hybrid System that is used for conducting trading rotations. The Exchange is proposing to amend the HOSS rule in various respects.

First, to have more flexibility in a manner that is consistent with other CBOE rules with order eligibility provisions, the Exchange is proposing to amend the HOSS rule to include an order eligibility provision. In particular, Rule 6.2B will be amended to provide that the Exchange shall designate the eligible order size, eligible order type, eligible order origin code (i.e., public customer orders, non-Market Maker broker-dealer orders, and Market

Maker broker-dealer orders) that HOSS will accept for rotations on a class-by-class basis. The proposal would not, however, permit the Exchange to discriminate among individual market participants of the same type (e.g., permit certain market-maker orders but not others to be eligible). The Rule will also be amended to delete a reference to spread orders and contingency order not being eligible to participate in HOSS opening trades or in the determination of the opening price, expected opening price or expected opening size. (As revised, the Exchange would determine whether to designate these orders types as eligible for HOSS on a class-by-class basis, just as it would for any other order type.) Any changes to the HOSS order eligibility parameters determined by the Exchange would be announced to CBOE Trading Permit Holders via Regulatory Circular.

This proposed change to include order eligibility requirements within the HOSS rule is consistent with the order eligibility requirements contained in other rules that pertain to features within CBOE's Hybrid System, such as the order eligibility requirements for Rule 6.13A, Simple Auction Liaison (SAL) (SAL is a feature within the Hybrid System that auctions marketable orders for price improvement over the national best bid and offer), and Rule 6.14, Hybrid Agency Liaison (HAL) (HAL is a feature within the Hybrid System that provides automated order handling in designated classes trading on Hybrid for qualifying electronic orders that are not automatically executed by the Hybrid System). The proposed rule change is also consistent with the provisions of Rule 6.53, Certain Types of Orders Defined, which provides that the classes and/or systems (e.g., the HOSS, SAL and HAL systems) for which the orders types described in Rule 6.53 shall be available will be as provided in the Exchange Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

Second, the Exchange is proposing to adopt new Interpretation and Policy .04 regarding the applicable allocation algorithm<sup>1</sup> for HOSS and to make related changes to Interpretation and Policy .03. Currently, there are various rotations procedures set forth in Rule 6.2B, such as the regular HOSS rotation procedure described in Rule 6.2B(a)-(g), the modified HOSS rotation procedure for Hybrid 3.0 classes described in Rule 6.2B.01, and the HOSS Hybrid Agency Liaison (“HAL) for openings (referred to herein as the “HOSS HAL-O” procedure) described in Rule 6.2B.03. Right now the Rule does not specifically identify the applicable allocation algorithm for the HOSS and modified HOSS rotation procedures. Paragraph (c)(iv) of the Rule simply states that in determining the priority of orders and quotes to be traded, the System gives priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price. For the HOSS HAL-O rotation procedure, Rule 6.2B.03 provides that the system gives priority to public customer market orders first (with multiple orders ranked based on time priority), then to non-public customer market orders second (with multiple orders being ranked based on time priority), then to multiple quotes and orders whose price is better than the opening price (with multiple quotes and orders being ranked in accordance with the allocation algorithm in effect for the option class pursuant to Rule 6.45A or 6.45B), then to limit orders and quotes at the opening price (with multiple orders and quotes ranked

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<sup>1</sup> The allocation algorithms include price-time, pro-rata, and the ultimate matching algorithm (“UMA”) base priorities and a combination of various optional priority overlays pertaining to public customer priority, Market-Maker participation entitlements, small order preference, and market turner. See 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.

in accordance with the allocation algorithm in effect for the class pursuant to Rule 6.45A or 6.45B).

The Exchange is proposing to remove the specific allocation algorithm description for HOSS HAL-O rotations in Interpretation and Policy .03(c)(i) of Rule 6.2B. Instead, the provision will be amended provide that, in determining the priority of orders and quotes to be traded, the System will give priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price (this description is the same as is currently provided in Rule 6.2B(c)(iv) and noted above). The Exchange is also proposing to adopt new Interpretation and Policy .04 to Rule 6.2B. Proposed Interpretation and Policy .04 to Rule 6.2B will provide that the Exchange may determine on a class-by-class basis which electronic allocation algorithm would apply for rotations (whether using the HOSS, modified HOSS or HOSS HAL-O rotation procedure). This change will also provide the Exchange with additional flexibility to permit the allocation algorithm in effect for a rotation to be different from the allocation algorithm in effect for the option class. All pronouncements regarding allocation algorithm determinations by the Exchange will be announced to CBOE Trading Permit Holders via Regulatory Circular.

In conjunction with this change, the Exchange is also proposing to modify Rule 6.2B to codify and describe the manner in which HOSS handles opening imbalances in series that open at a minimum price increment (e.g., a series that opens at a price of \$0.05 when the series is quoted in \$0.05 increments and a series that opens at a price of \$0.01 when the series is quoted in \$0.01 increments). In those scenarios, HOSS opens even if a sell market order imbalance exists. In addition, the Exchange may determine to apply a separate electronic

allocation algorithm for series that open at a minimum price increment due to a sell market order imbalance. As indicated above, pronouncements regarding allocation algorithm determinations will be announced via Regulatory Circular

The matching algorithm applied for rotations for each option class will be pursuant to Rule 6.45A or 6.45B, as applicable. Thus, the Exchange is not creating any new algorithms, but is amending Rule 6.2B to make clear that the Exchange may determine the applicable allocation algorithm for rotations as described above and to provide the flexibility for the Exchange to choose an algorithm from among the existing algorithms to be applied to rotations, rather than simply defaulting to the algorithm in effect for intra-day trading in the option class.

Finally, the Exchange is proposing non-substantive amendments to Rule 6.2B, so that the rule text can generally be more consistently organized, numbered and worded. For example, the Exchange is proposing to add descriptive headings to each section of the rule, and to replace multiple references to Exchange determinations being announced via Regulatory Circular with a single reference in proposed Interpretation and Policy .05, which will provide that all pronouncements regarding determinations by the Exchange pursuant to Rule 6.2B and the Interpretations and Policies thereunder will be announced to Trading Permit Holders via Regulatory Circular.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> in general and furthers the objectives of

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

Section 6(b)(5) of the Act<sup>3</sup> in particular 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed change would provide more flexibility and clarity in our HOSS rule. The Exchange also believes that the proposed HOSS order eligibility provision is consistent with order eligibility provisions in other existing rules, such as the SAL, HAL and order type rules.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Act<sup>4</sup> for Commission consideration of the proposed rule change.

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<sup>3</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

(a) The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act.<sup>5</sup>

(b) The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. The Exchange notes that it also provided a copy of this rule filing to the Commission five business days prior to filing. For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act.<sup>6</sup>

The Exchange requests that the Commission waive the 30-day operative delay requirements of this filing in order to allow the Exchange to implement the changes with respect to HOSS as soon as possible. The proposed changes to HOSS will provide more more flexibility and clarity in the rule. The Exchange also notes that the proposed HOSS order eligibility provision is consistent with order eligibility provisions in other existing rules, such as the SAL, HAL and order type rules. As such, the Exchange believes that the proposed rule change is non-controversial and does not raise any new, unique or substantive issues.

(c) Not applicable.

(d) Not applicable.

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or the Commission

Not applicable.

Item 9. Exhibits

Exhibit 1. Form of Notice of Proposed Rule Change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-CBOE-2010-114)

Dated: \_\_\_\_\_

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Hybrid Opening System

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 \_\_\_\_\_, 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 has designated 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 Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 6.2B, Hybrid Opening System (“HOSS”).

The text of the proposed rule change is available on the Exchange’s website

([www.cboe.org/Legal](http://www.cboe.org/Legal)), at the Exchange’s Office of the Secretary and at the Commission.

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<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).

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 Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

HOSS is a feature within CBOE's Hybrid System that is used for conducting trading rotations. The Exchange is proposing to amend the HOSS rule in various respects.

First, to have more flexibility in a manner that is consistent with other CBOE rules with order eligibility provisions, the Exchange is proposing to amend the HOSS rule to include an order eligibility provision. In particular, Rule 6.2B will be amended to provide that the Exchange shall designate the eligible order size, eligible order type, eligible order origin code (i.e., public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders) that HOSS will accept for rotations on a class-by-class basis. The proposal would not, however, permit the Exchange to discriminate among individual market participants of the same type (e.g., permit certain market-maker orders but not others to be eligible). The Rule will also be amended to delete a reference to spread orders and contingency order not being eligible to participate in HOSS opening trades or in the determination of the opening price, expected opening price or expected opening size. (As revised, the Exchange would determine whether to designate these orders types as eligible for

HOSS on a class-by-class basis, just as it would for any other order type.) Any changes to the HOSS order eligibility parameters determined by the Exchange would be announced to CBOE Trading Permit Holders via Regulatory Circular.

This proposed change to include order eligibility requirements within the HOSS rule is consistent with the order eligibility requirements contained in other rules that pertain to features within CBOE's Hybrid System, such as the order eligibility requirements for Rule 6.13A, Simple Auction Liaison (SAL) (SAL is a feature within the Hybrid System that auctions marketable orders for price improvement over the national best bid and offer), and Rule 6.14, Hybrid Agency Liaison (HAL) (HAL is a feature within the Hybrid System that provides automated order handling in designated classes trading on Hybrid for qualifying electronic orders that are not automatically executed by the Hybrid System). The proposed rule change is also consistent with the provisions of Rule 6.53, Certain Types of Orders Defined, which provides that the classes and/or systems (e.g., the HOSS, SAL and HAL systems) for which the orders types described in Rule 6.53 shall be available will be as provided in the Exchange Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

Second, the Exchange is proposing to adopt new Interpretation and Policy .04 regarding the applicable allocation algorithm<sup>5</sup> for HOSS and to make related changes to Interpretation and Policy .03. Currently, there are various rotations procedures set forth in

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<sup>5</sup> The allocation algorithms include price-time, pro-rata, and the ultimate matching algorithm ("UMA") base priorities and a combination of various optional priority overlays pertaining to public customer priority, Market-Maker participation entitlements, small order preference, and market turner. See 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.

Rule 6.2B, such as the regular HOSS rotation procedure described in Rule 6.2B(a)-(g), the modified HOSS rotation procedure for Hybrid 3.0 classes described in Rule 6.2B.01, and the HOSS Hybrid Agency Liaison (“HAL) for openings (referred to herein as the “HOSS HAL-O” procedure) described in Rule 6.2B.03. Right now the Rule does not specifically identify the applicable allocation algorithm for the HOSS and modified HOSS rotation procedures. Paragraph (c)(iv) of the Rule simply states that in determining the priority of orders and quotes to be traded, the System gives priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price. For the HOSS HAL-O rotation procedure, Rule 6.2B.03 provides that the system gives priority to public customer market orders first (with multiple orders ranked based on time priority), then to non-public customer market orders second (with multiple orders being ranked based on time priority), then to multiple quotes and orders whose price is better than the opening price (with multiple quotes and orders being ranked in accordance with the allocation algorithm in effect for the option class pursuant to Rule 6.45A or 6.45B), then to limit orders and quotes at the opening price (with multiple orders and quotes ranked in accordance with the allocation algorithm in effect for the class pursuant to Rule 6.45A or 6.45B).

The Exchange is proposing to remove the specific allocation algorithm description for HOSS HAL-O rotations in Interpretation and Policy .03(c)(i) of Rule 6.2B. Instead, the provision will be amended provide that, in determining the priority of orders and quotes to be traded, the System will give priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price (this description is the same as is currently provided in Rule 6.2B(c)(iv) and

noted above). The Exchange is also proposing to adopt new Interpretation and Policy .04 to Rule 6.2B. Proposed Interpretation and Policy .04 to Rule 6.2B will provide that the Exchange may determine on a class-by-class basis which electronic allocation algorithm would apply for rotations (whether using the HOSS, modified HOSS or HOSS HAL-O rotation procedure). This change will also provide the Exchange with additional flexibility to permit the allocation algorithm in effect for a rotation to be different from the allocation algorithm in effect for the option class. All pronouncements regarding allocation algorithm determinations by the Exchange will be announced to CBOE Trading Permit Holders via Regulatory Circular.

In conjunction with this change, the Exchange is also proposing to modify Rule 6.2B to codify and describe the manner in which HOSS handles opening imbalances in series that open at a minimum price increment (e.g., a series that opens at a price of \$0.05 when the series is quoted in \$0.05 increments and a series that opens at a price of \$0.01 when the series is quoted in \$0.01 increments). In those scenarios, HOSS opens even if a sell market order imbalance exists. In addition, the Exchange may determine to apply a separate electronic allocation algorithm for series that open at a minimum price increment due to a sell market order imbalance. As indicated above, pronouncements regarding allocation algorithm determinations will be announced via Regulatory Circular

The matching algorithm applied for rotations for each option class will be pursuant to Rule 6.45A or 6.45B, as applicable. Thus, the Exchange is not creating any new algorithms, but is amending Rule 6.2B to make clear that the Exchange may determine the applicable allocation algorithm for rotations as described above and to provide the flexibility for the Exchange to choose an algorithm from among the existing algorithms to be applied to

rotations, rather than simply defaulting to the algorithm in effect for intra-day trading in the option class.

Finally, the Exchange is proposing non-substantive amendments to Rule 6.2B, so that the rule text can generally be more consistently organized, numbered and worded. For example, the Exchange is proposing to add descriptive headings to each section of the rule, and to replace multiple references to Exchange determinations being announced via Regulatory Circular with a single reference in proposed Interpretation and Policy .05, which will provide that all pronouncements regarding determinations by the Exchange pursuant to Rule 6.2B and the Interpretations and Policies thereunder will be announced to Trading Permit Holders via Regulatory Circular.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed change would provide more flexibility and clarity in our HOSS rule. The Exchange also believes that the proposed HOSS order eligibility provision is consistent with order eligibility provisions in other existing rules, such as the SAL, HAL and order type rules.

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> At any time within 60 days of the filing of such 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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

Act. Comments may be submitted by any of the following methods:

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-2010-114 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-2010-114. 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 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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 available publicly. All submissions should refer to File Number SR-CBOE-2010-114 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Dated: \_\_\_\_\_

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).