

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74990; File No. SR-CBOE-2015-047]

May 18, 2015

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Floor Broker Due Diligence

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 May 5, 2015, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 amend Exchange rules related to Floor Broker due diligence.

The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

\* \* \* \* \*

Chicago Board Options Exchange, Incorporated  
Rules

\* \* \* \* \*

Rule 6.53. Certain Types of Orders Defined

One or more of the following order types may be made available on a class-by-class basis. Certain order types may not be made available for all Exchange systems. The classes and/or systems for which the order types shall be available will be as provided in the Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

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

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

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(g) *Not Held Order*. A not held order is an order marked "not held", "take time" or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed. An order entrusted to a Floor Broker will be considered a Not Held Order, unless otherwise specified by a Floor Broker's client or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the order entry firm's routing instructions.

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#### Rule 6.73. Responsibilities of Floor Brokers

(a) – (c) No Change.

*. . . Interpretations and Policies:*

.01 – .05 No Change.

.06 Pursuant to Rule 6.73(a), an order entrusted to a Floor Broker will be considered a Not Held Order as defined in Rule 6.53(g), unless otherwise specified by a Floor Broker's client or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the order entry firm's routing instructions.

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#### Rule 6.75. Discretionary Transactions

No Floor Broker shall execute or cause to be executed any order or orders on this Exchange with respect to which such Floor Broker is vested with discretion as to: (1) the choice of the class of options to be bought or sold, (2) the number of contracts to be bought or sold, or (3) whether any such transaction shall be one of purchase or sale; however, the provisions of this paragraph shall not apply to any discretionary transaction executed by a Market-Maker for an account in which he has an interest. [Under normal market conditions, and in the absence of a "not held" instruction, a Floor Broker may not exercise time discretion on market or marketable limit orders and shall immediately execute such orders at the best price or prices available.] Unless an order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the order entry firm's routing instructions or it is otherwise specified by a Floor Broker's client, an order entrusted to a Floor Broker will be considered a Not Held Order as defined in Rule 6.53(g).

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The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, 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 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 these 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 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 Exchange is proposing to amend Rules 6.53, 6.73, and 6.75 in order to clarify a Floor Broker’s due diligence obligations as it relates to executing orders on the Exchange’s floor.

Currently, “[a] Floor Broker handling an order is to use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules.”<sup>3</sup> Rule 6.73 also provides a non-exclusive list of the duties a Floor Broker must perform in order to satisfy the due diligence requirement.<sup>4</sup> For instance, interpretation and policy .01 states that “[p]ursuant to Rule 6.73(a), a Floor Broker’s use of due diligence in executing an order shall include ascertaining whether a better price than is being displayed by the Order Book Official is being quoted by another Floor Broker or a Market-Maker.”<sup>5</sup> However, current Rule 6.73 is generally silent on the exact meaning of due diligence, including, for example, whether a Floor Broker must execute a portion of an order against an order in an applicable order book when the displayed size in the order book is less than the size of the Floor Broker’s order. Additionally, Rule 6.75 provides that “[u]nder normal market

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<sup>3</sup> See Rule 6.73(a).

<sup>4</sup> See, e.g., Rule 6.73 Interpretation and Policies .01-.05.

<sup>5</sup> See Rule 6.73.01.

conditions, and in the absence of a “not held” instruction, a Floor Broker may not exercise time discretion on market or marketable limit orders and shall immediately execute such orders at the best price or prices available.” The Exchange believes that this requirement from Rule 6.75 is applicable and generally intended for situations when an entire order represented by a Floor Broker can be executed.<sup>6</sup> Furthermore, even when that is possible, Rule 6.73 requires a broker to ascertain if a better price is available in the trading crowd.<sup>7</sup> Thus, we strongly believe that these provisions are intended to protect against a broker failing to properly represent and ultimately execute orders. This makes even more sense when considering that virtually all options orders (large or small and retail or professional) were handled by Floor Brokers at the time these rules were adopted. Given the discrete profile of orders handled by Floor Brokers today (generally large size orders and often multi-leg) it is reasonable for Floor Brokers to “work” orders that are entrusted to them because that is the reason a customer would utilize a Floor Broker in today’s environment. In order to address the above scenarios, as well as to provide clarity and latitude to Floor Brokers using their experience and expertise in the execution of orders, the Exchange is proposing to add new interpretation and policy .06 to Rule 6.73, which is proposed to state that “[p]ursuant to Rule 6.73(a), an order entrusted to a Floor Broker will be considered a Not Held Order as defined in Rule 6.53(g), unless otherwise specified by a Floor Broker’s client or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the order entry firm’s routing instructions.”<sup>8</sup> The Exchange is also proposing to make conforming changes to

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<sup>6</sup> The Exchange notes that the rule filing that added the rule text in Rule 6.75, which this current proposal seeks to amend, did not specify whether brokers had to execute a portion of an order against a smaller sized order to satisfy the requirements of Rule 6.75. See Securities Exchange Act Release No. 24666, 50 FR 25679 (July 8, 1987) (SR-CBOE-85-31).

<sup>7</sup> See Rule 6.73.01.

<sup>8</sup> A “Not Held Order” is defined as an order marked “not held”, “take time” or which bears

Rules 6.53 and 6.75 in order for an order received by a Floor Broker to be considered a Not Held Order, unless the order was routed to the Exchange electronically or otherwise specified by the Floor Broker's client.

The purpose of this filing is to codify the amount of discretion a Floor Broker has when they receive an order. As Rules 6.73 and 6.75 were adopted prior to electronic trading, the rules did not contemplate the interaction between an electronic environment and a trading floor, and they have not been amended to specifically address that interaction. While it is clear that Floor Brokers have more discretion with regards to the manner in which they represent and execute orders on a trading floor than does a computer routing an order to the Exchange for execution, the bounds of the discretion have not been entirely clear. Rules 6.73 and 6.75, among others, set certain boundaries to a Floor Broker's discretion, but the Exchange believes the current marketplace, with electronic and floor trading, favors an amendment to those boundaries.

Electronic and floor trading gives clients the choice between a Trading Permit Holder ("TPH") that routes orders to the Exchange electronically or a TPH that executes orders via a Floor Broker. Clients are keenly aware that the differences between electronic and floor trading include at least the following factors: a computer cannot deviate from its programmed instructions and a Floor Broker can take into account the nuisances [sic] of the marketplace, such as the makeup of a particular trading floor, the individuals on that trading floor, and how the electronic books interact with that environment. The Exchange argues that the reason clients use Floor Brokers is precisely because Floor Brokers can take into account the nuisances [sic] of the marketplace (i.e., exercise a certain level of discretion) to potentially provide higher execution quality. The argument is

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any qualifying notation giving discretion as to the price or time at which such order is to be executed. See Rule 6.53(g).

furthered by the fact that if a client did not want a Floor Broker to use their expertise in the execution of an order, the client would simply send orders to the Exchange electronically.

It is evident that Floor Brokers have more discretion with regards to the manner in which they represent and execute orders than do computers executing electronic orders. With this rule change the Exchange seeks to amend certain boundaries related to that discretion. In particular, in recognition of the discretion implicit with the use of a Floor Broker, the Exchange seeks to provide notice to the marketplace that, unless otherwise specified by a Floor Broker's client or if the order is received by the Exchange electronically and routed to a Floor Broker, an order is deemed to be "not held." The Exchange believes clients that choose to use Floor Brokers do so in order to utilize a Floor Broker's expertise in the execution of orders. This rule change updates Exchange rules by setting forth the presumptive discretion available to Floor Brokers in a manner consistent with modern market structure and the Floor Broker's role in the current trading environment. This filing also serves as notice to the investing community that orders sent to Floor Brokers will be deemed "not held" unless otherwise specified by the client or if the order is received by the Exchange electronically and routed to a floor broker. In addition, the Exchange will announce the implementation of this rule change in a Regulatory Circular to be published within 90 days of the effective date of this filing. The implementation date will be within 180 days of the effective date of this filing.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the

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

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed change adds clarity and removes ambiguity related to the due diligence requirements of Floor Brokers, which helps serve the public interest and perfect the mechanism of a free and open market. In addition, the Exchange believes designating certain orders as “not held” is in the interest of facilitating transactions in securities and reflective of today’s marketplace, which generally helps to protect investors and the public interest.

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. The Exchange does not believe the proposed rule change will impose any burden on competition because the rule change adds clarity to the due diligence requirements governing Floor Brokers, reflects the modern market structure, is consistent with the reasons customers utilize Floor Brokers, and will be applied equally to all TPHs. To the extent that the proposed rule change

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Id.

will cause clients or brokers to choose CBOE over other trading venues, market participants on other exchanges are welcome to become TPHs and trade at CBOE if they determine that this proposed rule change has made CBOE more attractive or favorable.

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 proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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 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-2015-047 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2015-047. 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 website (<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 website 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 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. 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-2015-047 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>12</sup>

Robert W. Errett  
Deputy Secretary

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