

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68742; File No. SR-CBOE-2013-006)

January 28, 2013

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 17, 2013, 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, II, and III 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) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 Rule 6.2B, Hybrid Opening System (“HOSS”), regarding the dissemination of certain pre-opening information. The text of the proposed rule change is available on the Exchange’s website (www.cboe.org/Legal), at the Exchange’s Office of the Secretary and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to update the provisions of Rule 6.2B regarding the dissemination of certain pre-opening information. In relevant part, the current provisions of Rule 6.2B(a)(ii) provide that, during the pre-opening period, at specified intervals of time that will be announced to Trading Permit Holders,⁵ CBOE’s Hybrid Trading System (the “System”) will disseminate to market participants (as defined in Rule 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 System⁶) 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

⁵ Pursuant to Rule 6.5B.05 [sic], 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.

⁶ See introductory text to Rule 6.45A (which provides that the term “market participant” refers to a Market-Maker, a Designated Primary Market-Maker (“DPM”), an Electronic DPM (“e-DPM”), and a floor broker or a PAR Official representing orders in the trading crowd) and Rule 6.45B (which provides that the term “market participant” refers to a Market-Maker, a DPM or LMM, an e-DPM with an appointment in the subject class, and a floor broker or PAR Official representing orders in the trading crowd).

opening price (“EOP”) and expected opening size (“EOS”) given the current resting orders and quotes. The purpose of the proposed rule change is to update the text to provide that such pre-opening information will be disseminated to all users that have elected to receive such information (and to remove the existing reference to such pre-opening information being disseminated to market participants). As revised, the rule text will reflect that any user – whether or not a “market participant” – may receive pre-opening information.⁷ This revision will update the rule text to accurately reflect the Exchange’s current practice of making such pre-opening information available to any user – whether or not a “market participant.”⁸

The Exchange believes that the dissemination of this pre-opening information to all users that elect to receive such information increases opportunities for all types of participants (e.g., public customers, broker-dealers and market-makers) to participate in opening rotations. This broader participation could lead to more robust competition because more users may participate in opening rotations, which may result in better prices for customers.

⁷ The Exchange is also proposing to replace a reference from the specified intervals of time being “announced to Trading Permit Holders” to being “determined by the Exchange.” The Exchange notes that all pronouncements regarding determinations by the Exchange pursuant to Rule 6.2B and the Interpretations and Policies there under will be announced to Trading Permit Holders via Regulatory Circular. See Rule 6.2B.05; see also note 5, supra. The Exchange also notes that Regulatory Circulars are publically available on the Exchange’s website (www.cboe.com).

⁸ Users may elect to receive the pre-opening data via Market Data Express, LLC (“MDX,” an affiliate of CBOE). MDX currently makes the data available as part of the BBO Data Feed for CBOE listed options at no additional charge. See SR-CBOE-2013-005. In addition, for certain series, the Exchange may make certain pre-opening data available on its publically accessible website and/or display the information on monitors on the trading floor and through an application programming interface (“API”), each currently at no additional charge.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section [sic] the Act and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. [sic]

The proposed rule change will update the rule text to accurately reflect the Exchange's current practice of making pre-opening information available to any user – whether or not a “market participant.” The Exchange believes that the dissemination of the pre-opening information to all users that elect to receive such information increases opportunities for all types of participants (e.g., public customers, broker-dealers and

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(5).

market-makers) to participate in opening rotations. This broader participation could lead to more robust competition because more users may participate in opening rotations, which may result in better prices for customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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. As noted above, the Exchange believes that the dissemination of the pre-opening information to all users that elect to receive such information increases opportunities for all types of participants (e.g., public customers, broker-dealers and market-makers) to participate in opening rotations. This broader participation could lead to more robust competition because more users may participate in opening rotations, which may result in better prices for customers. The Exchange also believes that the data will help attract new users and new order flow to the Exchange, thereby improving the Exchange's ability to compete in the market for options order flow and executions. Finally, the Exchange notes that at least one other exchange, the NASDAQ Options Market ("NOM"), makes similar information about pre-opening information available to non-members.¹¹

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.

¹¹ NOM disseminates certain pre-opening order imbalance information every five seconds for a period of time prior to the open and this information is made available via subscription. See NOM Chapter VI, Section 8(b)(1) and Chapter XV, Section 4(e); see also <http://www.nasdaqtrader.com/trader.aspx?id=openclose>.

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

Because the proposed rule change 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)(iii) thereunder.¹³ 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 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of 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.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-006 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-2013-006. 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 also will 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-2013-006 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).