

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69867; File No. SR-CBOE-2013-066)

June 27, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extending AIM Pilot Programs

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 June 26, 2013, 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 and II 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 its rules related to its Automated Improvement Mechanism (“AIM”). The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

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**Chicago Board Options Exchange, Incorporated**

**Rules**

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**Rule 6.74A. Automated Improvement Mechanism (“AIM”)**

Notwithstanding the provisions of Rule 6.74, a Trading Permit Holder that represents agency orders may electronically execute an order it represents as agent (“Agency Order”) against principal

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

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

interest or against a solicited order provided it submits the Agency Order for electronic execution into the AIM auction (“Auction”) pursuant to this Rule.

(a) – (b) No change.

**... Interpretations and Policies:**

**.01 – .02** No change.

**.03** Initially, and for at least a Pilot Period expiring on July 18, 2014<sup>[3]</sup>, there will be no minimum size requirement for orders to be eligible for the Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any data which is submitted to the Commission will be provided on a confidential basis.

**.04 – .05** No change.

**.06** Subparagraph (b)(2)(E) of this rule will be effective for a Pilot Period until July 18, 2014<sup>[3]</sup>. During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, relating to the frequency with which early termination of the Auction occurs pursuant to this provision as well as any other provision, and also the frequency with which early termination pursuant to this provision results in favorable pricing for the Agency Order. Any data which is submitted to the Commission will be provided on a confidential basis.

**.07 – .08** No change.

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The text of the proposed rule change is 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**

In February 2006, CBOE obtained approval from the Commission to adopt the AIM auction process.<sup>3</sup> AIM exposes certain orders electronically to an auction process to provide these orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that a Trading Permit Holder represents as agent ("Agency Order") and for which a second order of the same size as the Agency Order (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

The Commission approved two components of AIM on a pilot basis: (1) that there is no minimum size requirement for orders to be eligible for the auction; and (2) that the auction will conclude prematurely anytime there is a quote lock on the Exchange pursuant to Rule 6.45A(d).<sup>4</sup> In connection with the pilot programs, the Exchange has submitted to the Commission reports providing detailed AIM auction and order execution data, and the Exchange will continue to submit to the Commission these reports. Seven one-year extensions to the pilot programs have

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<sup>3</sup> See Securities Exchange Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR-CBOE-2005-060).

<sup>4</sup> A quote lock occurs when a CBOE Market-Maker's quote interacts with the quote of another CBOE Market-Maker (i.e. when internal quotes lock).

previously become effective.<sup>5</sup> The proposed rule change merely extends the duration of the pilot programs until July 18, 2014. Extending the pilots for an additional year will allow the Commission more time to consider the impact of the pilot programs on AIM order executions.

## 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>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</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

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<sup>5</sup> See Securities Exchange Act Release Nos. 54147 (July 14, 2006), 71 FR 41487 (July 21, 2006) (SR-CBOE-2006-064); 56094 (July 18, 2007), 72 FR 40910 (July 25, 2007) (SR-CBOE-2007-080); 58196 (July 18, 2008), 73 FR 43803 (July 28, 2008) (SR-CBOE-2008-076) (in this filing, the Exchange agreed to provide to the Commission additional information relating to the AIM auctions each month in order to aid the Commission in its evaluation of the pilot program, which the Exchange will continue to do); 60338 (July 17, 2009), 74 FR 36803 (July 24, 2009) (SR-CBOE-2009-051); 62522 (July 16, 2010), 75 FR 43596 (July 26, 2010) (SR-CBOE-2010-067); 64930 (July 20, 2011), 76 FR 44636 (July 26, 2011) (SR-CBOE-2011-066); and 67302 (June 28, 2012), 77 FR 39779 (July 5, 2012) (SR-CBOE-2012-061).

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

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

is consistent with the Section 6(b)(5)<sup>8</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change protects investors and the public interest by allowing for an extension of the AIM pilot programs, and thus allowing additional time for the Commission to evaluate the AIM pilot programs. The AIM pilot programs will continue to allow (1) smaller orders to receive the opportunity for price improvement pursuant to the AIM auction, and (2) Agency Orders in AIM auctions that are concluded early because of quote lock on the Exchange to receive the benefit of the lock price.

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 imposes any burden on intramarket competition because it applies to all Trading Permit Holders. All Trading Permit Holders that submit orders into an AIM auction are still subject to the same requirements. In addition, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition, as it merely extends the duration of existing pilot programs, which are available to all market participants through Trading Permit Holders. AIM will continue to function in the same manner as it currently functions for an extended period of time.

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.

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<sup>8</sup> Id.

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

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay. The Exchange noted that such waiver will permit the AIM pilot programs to continue without interruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot programs to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot programs. Further, the Commission notes that, because the filing was submitted for immediate effectiveness on June 26, 2013, the fact that the current rule

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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. The Commission deems this requirement to have been met.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

provision does not expire until July 18, 2013 will afford interested parties the opportunity to comment on the proposal before the Exchange requires it to become operative. For this reason, the Commission designates the proposed rule change to be operative on July 18, 2013.<sup>13</sup>

At any time within 60 days of the filing of the 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-066 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-2013-066. 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

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<sup>13</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street, NE, Washington, DC 20549. Copies of such 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-2013-066 and should be submitted on or before [date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).