

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-72195; File No. SR-CBOE-2014-044)**

**May 20, 2014**

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated;  
Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to  
Regulatory Cooperation**

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 8, 2014, 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**

Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) proposes to amend its rules related to regulatory cooperation. 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

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

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

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 proposes to amend Rule 15.9(a) to make explicit the Exchange’s authority to enter into information sharing agreements with the Public Company Accounting Oversight Board (the “PCAOB”).

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”)<sup>3</sup> amended the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”)<sup>4</sup> to give the PCAOB authority to oversee the audits of brokers and dealers registered with the Securities and Exchange Commission (the “SEC” or the “Commission”). Among other things, Section 104(a)(2) of Sarbanes-Oxley authorizes the PCAOB to establish an inspection program by rule. In August 2011, the Commission approved Temporary Rule 4020T of the PCAOB to implement this new authority.<sup>5</sup> By granting the PCAOB regulatory authority over the audits of registered brokers and dealers, Congress granted the PCAOB authority to receive financial data and related underlying data about registered broker-dealers, such as that which would be provided by the Exchange under the proposed rule change.

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<sup>3</sup> Public Law 111-203, 124 Stat 1376 (July 21, 2010).

<sup>4</sup> Public Law 107-204, 116 Stat. 745.

<sup>5</sup> See Securities Exchange Act Release No. 65163 (August 18, 2011), 76 FR 52996 (August 24, 2011) (approving PCAOB temporary rule for an interim program of inspections related to registered public accounting firm audits of broker-dealers).

The Exchange has entered into an information sharing agreement with the PCAOB. The Exchange intends to share, for example, Trading Permit Holder FOCUS Report<sup>6</sup> data with the PCAOB. Under the information sharing agreement, the PCAOB has agreed to treat all information provided to it by the Exchange as confidential and to assert such confidentiality and other applicable privileges in response to requests for such information from third parties.<sup>7</sup> Under the agreement shared information may be used by the recipient solely to fulfill its regulatory duties and purposes. The proposed rule makes explicit the Exchange's authority to enter into an agreement under such terms.

As discussed above, Congress has expressly granted the PCAOB authority to inspect broker-dealers and the Commission has approved the PCAOB's interim rule to implement that authority. The Exchange believes sharing information with the PCAOB, due to its audit oversight role over broker-dealers, including CBOE Trading Permit Holders, will assist the PCAOB in performing the oversight intended by Congress, under terms approved by the Commission.<sup>8</sup> By explicitly permitting the Exchange to share confidential information with the PCAOB for the purposes stated in Rule 15.9, the

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<sup>6</sup> The "FOCUS Report (Form X-17A-5) constitutes the basic financial and operational report required of those brokers or dealers subject to any minimum net capital requirement set forth in Rule 15c3-1." General Instructions to FOCUS Report Form X-17A-5 Part IIA, OMB Number 3235-0123, available at: [http://www.sec.gov/about/forms/formx-17a-5\\_2a.pdf](http://www.sec.gov/about/forms/formx-17a-5_2a.pdf).

<sup>7</sup> The recipient of shared information under the agreement may provide shared information to the SEC, if the information is accompanied by a Freedom of Information Act confidential treatment request, and to other self-regulatory or regulatory organizations pursuant to information sharing agreements that require the organizations to maintain the confidentiality of the shared information.

<sup>8</sup> See supra, note 5. The Exchange notes that if Temporary Rule 4020T of the PCAOB is not renewed, the Exchange would no longer have authority to share information with PCAOB pursuant to CBOE Rule 15.9(a).

proposed rule change will therefore make express the Exchange's authority to assist the PCAOB to fulfill its Congressional mandate, under terms approved by the Commission. Further, the proposed rule change will notify Trading Permit Holders of the Exchange's authority to enter into such information sharing agreements with the PCAOB.

## 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 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.

The proposed rule change is in the public's interest as it will explicitly authorize the Exchange to enter into an information sharing agreement with the PCAOB, thereby facilitating the sharing of information with the PCAOB. The ability to obtain information

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

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

<sup>11</sup> Id.

from the Exchange will better enable the PCAOB to perform its functions related to broker-dealer audit oversight. Better oversight of registered broker-dealer audits is in the public's interest and will serve to prevent fraudulent and manipulative acts and practices. Additionally, one of the essential purposes of the proposed rule change is to foster cooperation and coordination with persons engaged in regulating and processing information related to transactions in securities.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>12</sup> which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange. The PCAOB has agreed to reciprocate in sharing information of regulatory interest to the Exchange, which will provide the Exchange with more tools and information to enforce compliance by Trading Permit Holders and persons associated with Trading Permit Holders. As further evidence of its intent to reciprocate in sharing information with the Exchange, the PCAOB has filed a proposed change to its Rule 5108 to "conform to the Dodd-Frank amendments that permit the [PCAOB] to share confidential information with 'a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization.'"<sup>13</sup>

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<sup>12</sup> 15 U.S.C. 78f(b)(1).

<sup>13</sup> See Securities Exchange Act Release No. 34-71237 (January 6, 2014), 79 FR 6272 (February 3, 2014) (notice of filing of proposed rules on amendments to conform the PCAOB's rules and forms to the Dodd-Frank Act and make certain updates and clarifications). The Commission notes that it has since taken action on the PCAOB proposal. See Securities Exchange Act Release No. 72087 (May 2, 2014), 79 FR 26491 (May 8, 2014) (File No. PCAOB-2013-03) (notice of

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 proposed rule change is not designed to address any competitive issues but rather is designed to facilitate the sharing of information between PCAOB and the Exchange to better enable each to fulfill its respective regulatory duties and responsibilities.

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**

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,<sup>14</sup> the proposed rule change has become effective pursuant to Section

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filing of Amendment No. 1, and order granting accelerated approval).

<sup>14</sup> The Exchange has fulfilled this requirement.

19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</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 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-2014-044 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-CBOE-2014-044. 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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<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, D.C. 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-2014-044 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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