SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73628; File No. SR-CBOE-2014-085)

November 18, 2014

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

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 November 10, 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, 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 the definition of "Professional" in Rule 1.1(ggg) and adopt Interpretation and Policy .01 to Rule 1.1(ggg) concerning the definition of an "order" for purposes of Rule 1.1(ggg). The text of the proposed rule change is provided below and in Exhibit 1.

(additions are underlined; deletions are [bracketed])

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**Chicago Board Options Exchange, Incorporated**
**Rules**

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

## CHAPTER I

## Definitions

### ¶ 2001 Definitions

RULE 1.1 When used in these Rules, unless the context otherwise requires:

(a) Any term defined in the Bylaws and not otherwise defined in this Chapter shall have the meaning assigned to such term in the Bylaws.

(b) – (fff)

**Professional**

(ggg) The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Professional will be treated in the same manner as a broker or dealer in securities for purposes of Rules 6.2A, 6.2B, 6.8C, 6.9, 6.13A, 6.13B, 6.25, 6.45, 6.45A (except for Interpretation and Policy .02), 6.45B (except for Interpretation and Policy .02), 6.53C(c)(ii), 6.53C(d)(v), subparagraphs (b) and (c) under Interpretation and Policy .06 to Rule 6.53C, 6.74 (except Professional orders may be considered public customer orders subject to facilitation under paragraphs (b) and (d)), 6.74A, 6.74B, 8.13, 8.15B, 8.87, 24.19, 43.1, 44.4, 44.14. The Professional designation is not available in Hybrid 3.0 classes. All Professional orders shall be marked with the appropriate origin code as determined by the Exchange.

***. . . Interpretations and Policies:***

**.01** For purposes of this Rule 1.1(ggg), an order which is placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities that is broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer in order to achieve a specific execution strategy including, for example, a basket trade, program trade, portfolio trade, basis trade, or benchmark hedge, constitutes a single order and shall be counted as one order.

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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 proposes to amend its definition of "Professional" to clarify how orders are computed under Rule 1.1(ggg). Specifically, the Exchange proposes to adopt Interpretation and Policy .01 to Rule 1.1(ggg) to its definition of "Professional" in Rule 1.1(ggg) to provide that for purposes of Rule 1.1(ggg), an order which is placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities that is broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer in order to achieve a specific execution strategy including, for example, a basket trade, program trade, portfolio trade, basis trade, or benchmark hedge, constitutes a single order and shall be counted as one order. The Exchange also proposes to add a provision to Rule 1.1(ggg), which would provide that all Professional orders shall be marked with the appropriate origin code as determined by the Exchange.

The Exchange believes that the proposed rule changes will add clarity and transparency to its current rules, which is in the interests of all market participants. The purpose of this rule filing is to codify the details of the Exchange's existing policies within the Rules. The Exchange

is continuously evaluating clarifying additions to the Rules, particularly with respect to order handling. The Exchange believes that the proposed rule change and adoption of proposed Interpretation and Policy .01 to Rule 1.1(ggg) is consistent with this effort.

Background

Under the Exchange's Rules, "public customers" are granted certain marketplace advantages over non-customers. In particular, public customer orders receive priority over non-customer orders and Market-Maker quotes at the same price. Subject to certain exceptions, public customer orders also do not incur transaction charges. These marketplace advantages are intended to promote various business and regulatory objectives including, but not limited to the Exchange's goals of providing competitive pricing and attracting retail order flow.

Prior to 2009, the Exchange designated all orders as either customer orders or non-customer orders based on whether an order was placed for the account of a registered securities broker or dealer. In general, order priority and transaction fees were determined solely on this distinguishing criterion. As investors' access to technology and information increased, however, the Exchange's distinction between public customers and non-customers became less effective in promoting the intended purpose of the Rules. As the Exchange noted at the time, it did not believe that the definitions of public customer and non-customer properly distinguished between the kind of non-professional retail investors that the order priority rules and transaction fees exceptions were intended to benefit.[3] Furthermore, the Exchange believed that distinguishing solely between registered broker-dealers and non-broker-dealers with respect to these advantages was no longer appropriate in the marketplace because some non-broker-dealer individuals and entities have access

[3] See Securities Exchange Act Release No. 34-61198 (December 17, 2009), 74 FR 248 (December 29, 2009) (Order Granting Approval of the Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders) (SR-CBOE-2009-078).

to information and technology that enables them to trade listed options in the same manner as a broker or dealer in securities.[4] The Exchange therefore did not believe that it was consistent with fair competition for these professional account holders to continue to receive the same marketplace advantages that retail investors have over broker-dealers trading on the Exchange.[5] Accordingly, in 2009, the Exchange adopted a definition of "Professional" under Rule 1.1(ggg) to further distinguish different types of orders placed on the Exchange.[6]

Under Rule 1.1(ggg), a person or entity that is not a securities broker or dealer that places more than 390 listed options orders per day on average during a calendar month for its own beneficial account(s) is considered a "Professional." Furthermore, under Rule 1.1(ggg), a person or entity that is not a securities broker or dealer that places more than 390 listed options orders per day on average during a calendar month for its own beneficial account(s) is considered a "Professional" and treated in the same manner as a broker or dealer in securities with respect to order priority and transaction fees.[7] In general, "Professionals" are treated as broker-dealers with respect to priority of

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4 See id.

5 See id.

6 See Rule 1.1(ggg).

7 Under Rule 1.1(ggg), "Professionals" are treated in the same manner as a broker or dealer in securities for purposes of Rules Rules 6.2A (Rapid Opening System), 6.2B (Hybrid Opening System), 6.8C (Prohibition Against Members Functioning as Market-Makers), 6.9 (Solicited Transactions), 6.13A (Simple Auction Liaison), 6.13B (Penny Price Improvement), 6.45 (Priority of bids and Offers – Allocation of Trades), 6.45A (Priority and Allocation of Equity Option Trades on the CBOE Hybrid System) (except that Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy .02), 6.45B (Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System) (except that Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy .02), 6.53C(c)(ii) and (d)(v) and 6.53C.06(b) and (c) (Complex Orders on the Hybrid System), 6.74 (Crossing Orders) (except that Professional orders may be considered public customer orders subject to facilitation under paragraphs (b) and (d)), 6.74A (Automated

order and transaction fees under the current Rules of the Exchange. Rule 1.1(ggg) is based on and substantially similar to International Securities Exchange ("ISE") Rule 100(a)(31A) as well as NASDAQ OMX BX Chapter I, Section I(a)(49), BATS Exchange Rule 16.1(a)(45), NASDAQ OMX Phlx Rule 1000(b)(14), BOX Options Exchange Rule 100(a)(50), and NYSE Amex Exchange Rule 900.2NY(18A).[8] Notably, several of these exchanges cited uniform application of Professional Order rules and discouraging regulatory arbitrage as primary reasons for adopting a Professional Order rule.[9]

Upon adopting Rule 1.1(ggg), the Exchange issued a Regulatory Circular, interpreting Rule 1.1(ggg).[10] With respect the counting of single original orders that are then broken up into multiple orders to achieve a specific execution strategy, the Exchange followed ISE's interpretation of its

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Improvement Mechanism) (except Professional orders may be considered customer Agency Orders or solicited orders eligible for customer-to-customer immediate crosses under Interpretation and Policy .09), 6.74B (Solicitation Auction Mechanism), 8.13 (Preferred Market-Maker Program), 8.15B (Participation Entitlement of LMMs), 8.87 (Participation Entitlement of DPMs and e-DPMs), 24.19 (Multi-Class Broad-Based Index Option Spread Orders), 43.1 (Matching Algorithm/Priority), 44.4 (Obligations of SBT Market-Makers), and 44.14 (SBT DPM Obligations). *See* Securities and Exchange Act Release No. 34-61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (Order Granting Approval of the Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders) (SR-CBOE-2009-078).

8 See Securities and Exchange Act Release No. 34-61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (Order Granting Approval of the Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders) (SR-CBOE-2009-078).

9 See, e.g.; Securities and Exchange Act Release No. 34-62724 (August 16, 2010), 75 FR 51509 (August 20, 2010) (Notice of Filing of a Proposed Rule Change by the NASDAQ Stock Market LLC To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked) SR-NASDAQ-2010-099;Securities and Exchange Act Release No. 34-65500 (October 6, 2011), 76 FR 63686 (October 13, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked) SR-BATS-2011-041.

10 See CBOE RG09-148 (Professional Orders).

Rule 100(a)(31A).[11] Under ISE Rule 100(a)(31A), if a customer places a "parent" order that is then broken up by an executing firm into multiple "child" orders to achieve a specific execution strategy, the original order is counted as one order for professional order purposes.[12] ISE recently clarified this interpretation further, providing that original orders that are placed on behalf of the beneficial account of a non-broker-dealer, which are then broken up by a broker-dealer (or pursuant to an algorithm licensed from a broker-dealer) in order to achieve a specific execution strategy, such original orders will be counted as one order for professional order purposes.[13] In order to clarify the Rules and ensure uniformity with Professional Order rules in place throughout the industry, the Exchange is proposing to codify this interpretation in the Rules.

Proposal

The Exchange proposes to adopt Interpretation .01 to Rule 1.1(ggg) to clarify the Rules and help ensure uniform compliance. Specifically, the Exchange proposes to codify its current practice of counting "parent" orders, placed on a single ticket for the beneficial account(s) of a person or entity that is not a broker or dealer in securities and which are broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer in order to achieve a specific execution strategy as one order for Professional Order purposes. The Exchange believes that the proposed rule will add transparency to and completeness to the Rules, which is in the best interests of all market participants.

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11 See ISE Regulatory Information Circular 2009-179 (Priority Customer Orders and Professional Orders (FAQ)).

12 Id.

13 See ISE Regulatory Information Circular 2014-007 (Priority Customer Orders and Professional Orders (FAQ)).

The Exchange notes that the proposed rule is in-line with current Exchange practices and interpretations of nearly identical rules of other exchanges.[14] The Exchange believes that disparate rules with respect to Professional order designation, and lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that the risk of regulatory arbitrage is heightened in an environment where similar rules are interpreted differently amongst different exchanges and there is a lack of uniformity in marking Professional Orders when routing such orders away. The Exchange also proposes to amend Rule 1.1(ggg) to provide that all Professional orders shall be marked with the appropriate origin code as determined by the Exchange in order to bring the Exchange's rules in-line with the Professional Order rules of other exchanges. The Exchange believes that it is necessary to have uniform interpretations of Professional Order designations throughout the industry.

The Exchange also believes that counting basket trades, program trades, portfolio trades, basis trades, and benchmark hedges placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities and which are broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer as one order for Professional Order purposes is in-line with the purpose of its Professional customer rule and serves the best interests of investors. The types of trades cited above are often used by money managers, pension fund managers, and others to gain exposure to a particular set of securities at exactly the same time on behalf of retail customers and investors. These strategies are singular strategies, placed on a single ticket, that are used to avoid front- running and maintain privacy on behalf of customers. These trades are essentially one trade from a strategic standpoint in that all the terms of the trade are entered at one

[14] See ISE Regulatory Information Circular 2014-007 (Priority Customer Orders and Professional Orders (FAQ)).

point in time on a single ticket.[15] Accordingly, the Exchange believes that such trades should be treated as one trade for Professional order purposes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] 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)[18] 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 that the proposed rules is consistent with Section 6(b)(5) of the Act[19] with respect to removal of impediments to, and perfection of the mechanism of, a free and open market and national market system. The Exchange believes that disparate

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15 Although a change in a parent order's terms, price, or size would cause the order to be considered an additional order under the Rules, changes to child orders, which are initiated to keep an overall execution strategy in place, would not cause a parent order to refresh or result in multiple orders.

16 15 U.S.C. 78f(b).

17 15 U.S.C. 78f(b)(5).

18 Id.

rules regarding Professional order designations, and a lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage. Accordingly, the Exchange believes that disparate application of similar Professional Order rules is inconsistent with the goals of a national market system. The Exchange believes that it is therefore prudent and necessary to have a Professional designation rule that is in-line with the rules of other exchanges. The Exchange believes that the disparate application of Professional Order designations would result in the different treatment of similar orders, thwarting the principles underlying order protection rules and the national market system. The Exchange believes that an alternative interpretation of Rule 1.1(ggg) would result in the disparate treatment retail investors who the Rules are designed to grant priority and who might otherwise be treated as Professionals under the Rules. As such, the Exchange believes that the proposed rule changes are consistent with the Act.

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. Rather, the Exchange believes that the proposed rule will promote both intramarket and intermarket competition by allowing retail investors to take advantage of the priority rules that are intended to benefit them and placing all investors on equal footing as a result of uniform rules amongst the various exchanges. The Exchange believes that disparate rules with respect to Professional order designation, and lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that regulatory arbitrage contravenes the notion of fair competition and is not in the best interests of

[19] Id.

investors.

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 written comments on the proposed rule changes submitted in this filing.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b-4(f)(6) thereunder.[21] Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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) of the Act[22] and Rule 19b-4(f)(6)[23] thereunder. 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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20 15 U.S.C. 78s(b)(3)(A).

21 17 CFR 240.19b-4(f)(6).

22 15 U.S.C. 78s(b)(3)(A).

23 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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 Exchange has satisfied this requirement.

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. Please include File Number SR-CBOE-2014-085 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-2014-085. 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-2014-085 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.[24]

Kevin M. O'Neill
Deputy Secretary

[24] 17 CFR 200.30-3(a)(12).