SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77848; File No. SR-CBOE-2016-024)

May 17, 2016

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to AIM Retained Orders

I. Introduction

On March 22, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to codify the Exchange's Automated Improvement Mechanism ("AIM") Retained Order functionality in its rules. On April 1, 2016, the Exchange filed Amendment No. 1 to the proposal. On April 4, 2016, the Exchange filed Amendment No. 2 to the proposal.[3] The proposed rule change, as modified by Amendment No. 2, was published for comment in the Federal Register on April 8, 2016.[4] No comment letters were received on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposed Rule Change

Under CBOE Rule 6.74A, a Trading Permit Holder ("TPH") that represents agency orders may electronically execute an order it represents as agent ("Agency Order") against principal interest or against a solicited order provided it submits the Agency Order for electronic execution into the AIM auction ("Auction") for processing. If certain eligibility requirements

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

2 17 CFR 240.19b-4.

3 Amendment No. 2 superseded Amendment No. 1 in its entirety.

4 See Securities Exchange Act Release No. 77511 (April 4, 2016), 81 FR 20697 ("Notice").

contained in CBOE Rule 6.74A(a)[5] are not satisfied, then both the Agency Order and the matching contra order(s) will be cancelled.

The AIM Retained Order ("A:AIR") functionality allows TPHs the ability to choose, on an order-by-order basis, whether an Agency Order should continue into the Hybrid Trading System[6] for processing rather than cancel in the event that an Auction cannot occur.[7] Specifically, the Exchange proposes to define an AIM Retained Order as the transmission of two or more orders for crossing pursuant to CBOE Rule 6.74A, with the Agency Order priced at the market or a limit price in the standard increment for the option series and marked with a contingency instruction to route the Agency Order for processing and cancel any contra orders if an Auction cannot occur (including if the conditions described in CBOE Rule 6.74A(a) are not met).

CBOE also proposes that orders marked "A:AIR" containing Agency Orders that are not priced at the market, or that are priced with a limit price not in the standard increment for the

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5 Specifically, to be eligible for processing via AIM, the Agency Order must be: (1) in a class designated as eligible for Auctions and within the designated eligibility size parameters as determined by the Exchange; (2) stopped with a principal or solicited order priced at the national best bid or offer ("NBBO") (if 50 standard option contracts or 500 mini-option contracts or greater) or one cent/one minimum increment better than the NBBO (if less than 50 standard option contracts or 500 mini-option contracts); and (3) submitted in a series in which at least three Market-Makers are quoting if submitted during regular trading hours. See CBOE Rule 6.74A(a).

6 The Hybrid Trading System refers to the Exchange's trading platform as defined in Rule 1.1(aaa) (Hybrid Trading System).

7 According to the Exchange, there are a variety of circumstances in which an AIM order may be submitted to the Exchange for processing, but an auction may not occur. For example, a TPH may submit an order for AIM processing that is not AIM eligible because one or more of the conditions required for an AIM auction to occur pursuant to Rule 6.74A(a) is not present. In addition, an order that is otherwise AIM eligible may not be able to process for a variety of reasons, including, but not limited to circumstances in which AIM functionality is suspended. In either of such cases, A:AIR functionality may allow the Agency Order to process despite the overall order not being AIM eligible. See Notice, supra note 4, at 20698.

option series in which they are entered, would be cancelled. The Exchange proposes this interpretation to ensure that A:AIR orders are properly priced to allow the Exchange to book the Agency Order in the event an Auction cannot occur.[8]

CBOE proposes to make the A:AIR order functionality available on those order management platforms as determined by the Exchange and announced via Regulatory Circular. The Exchange also proposes to clarify that in the event that a TPH submits a matched Agency Order for electronic execution into the Auction that is ineligible for processing because it does not meet the conditions described in CBOE Rule 6.74A(a), both the Agency Order and any solicited contra orders will be cancelled unless marked as an AIM Retained Order pursuant to proposed Interpretation and Policy .09 to CBOE Rule 6.74A.[9]

Finally, the Exchange proposes to make changes to Interpretation and Policy .08 to CBOE Rule 6.53C regarding price reasonability checks on complex orders to harmonize non-specific references to the current A:AIR functionality in CBOE Rule 6.53C with the language in proposed Interpretation and Policy .09 to CBOE Rule 6.74A. The Exchange states that these changes are non-substantive and intended only to harmonize existing references to A:AIR functionality in its rules with the definition of A:AIR orders set forth in proposed Interpretation and Policy .09 to CBOE Rule 6.74A.[10]

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8 See Notice, supra note 4, at 20698.

9 According to the Exchange, the current A:AIR functionality is used primarily by smart router technology to ensure that ineligible AIM orders are submitted into the Hybrid Trading System for processing and not cancelled. See Notice, supra note 4, at 20698. Whereas traditional brokers and dealers are equipped to manually handle cancelled orders that are returned to them and may revise the cancelled orders' terms or contact their customers for further instructions, the Exchange states that smart routers are generally all electronic algorithmic systems that may not allow for manual handling of cancelled orders. See id.

10 See Notice, supra note 4, at 20698.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities 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 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 and that the rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Commission notes that, according to the Exchange, the A:AIR functionality provides an execution opportunity for customer orders that a TPH submitted for crossing via AIM but cannot be executed via AIM.[13] Such opportunity could help protect the interest of investors by helping to ensure that ineligible AIM Agency Orders are processed, rather than cancelled.

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11 In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

12 15 U.S.C. 78f(b)(5).

13 See Notice, supra note 4, at 20699.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR-CBOE-2016-024), as modified by Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett
Deputy Secretary

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14 15 U.S.C. 78s(b)(2).

15 17 CFR 200.30-3(a)(12).