

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81586; File No. SR-CBOE-2017-059)

September 12, 2017

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the On-Floor Lead Market-Maker Program

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 August 31, 2017, 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 the On-Floor Lead Market-Maker (“LMM”) program.

The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

\* \* \* \* \*

**Chicago Board Options Exchange, Incorporated**

**Rules**

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**Rule 8.15. Lead Market-Makers**

(a) No change.

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

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

**(b) LMM Obligations:** Each LMM must fulfill all the obligations of a Market-Maker under the Rules and satisfy each of the following requirements:

(i) provide continuous electronic quotes (as defined in Rule 1.1 (ccc)) in at least the lesser of 99% of the non-adjusted option series or 100% of the non-adjusted option series minus one call-put pair, with the term “call-put pair” referring to one call and one put that cover the same underlying instrument and have the same expiration date and exercise price. This obligation does not apply to intra-day add-on series on the day during which such series are added for trading. Compliance with this quoting obligation applies to all of an LMM’s appointed classes on each platform collectively. The Exchange will determine compliance by an LMM with this quoting obligation on a monthly basis. However, determining compliance with this obligation on a monthly basis does not relieve an LMM from meeting this obligation on a daily basis, nor does it prohibit the Exchange from taking disciplinary action against an LMM for failing to meet this obligation each trading day. In option classes in which both an On-Floor LMM and an Off-Floor DPM or Off-Floor LMM have been appointed, the On-Floor LMM will not be obligated to comply with this paragraph (b)(i) and instead will be obligated to comply with the obligations of Market-Makers in Rule 8.7(d). In an option class in which the Exchange appointed an On-Floor LMM that has open-outcry obligations only, that On-Floor LMM will not be obligated to comply with this paragraph (b)(i) and instead will be obligated to comply with the obligations of Market-Makers in Rule 8.7(d) and have a designee in the class’s crowd on the trading floor for the entire trading day (except for a de minimis amount of time);

(ii) – (iv) No change.

(v) enter opening quotes within one minute of the initiation of an opening rotation in any series that is not open due to the lack of a quote (see Rule 6.2B(d)(i)(A) or (ii)(A)) and

participate in other rotations described in Rule 6.2B (including the modified opening rotation set forth in Interpretation and Policy .01) or 24.13, as applicable. In option classes in which both an On-Floor LMM and an Off-Floor DPM or Off-Floor LMM have been appointed, the obligation set forth in this paragraph (b)(v) will be that of the Off-Floor DPM or Off-Floor LMM and not the On-Floor LMM. In an option class in which the Exchange appointed an On-Floor LMM that has open-outcry obligations only, that On-Floor LMM will not be obligated to comply with this paragraph (b)(v);

(vi) – (viii) No change.

(c) – (d) No change.

*. . . Interpretations and Policies:*

**.01** An LMM generally will operate on CBOE’s trading floor (“On-Floor LMM”).

However, as provided below, an LMM can request that the Exchange authorize the LMM to function remotely away from CBOE’s trading floor (“Off-Floor LMM”) on a class-by-class basis.

(a) – (b) No change.

(c) Notwithstanding Rule 8.15(a)[,]: (i) in an option class in which an Off-Floor LMM or Off-Floor DPM has been appointed in accordance with this Rule 8.15 or Rule 8.83, as applicable, the Exchange in its discretion may also appoint an On-Floor LMM, which will be eligible to receive a participation entitlement under this Rule 8.15 with respect to orders represented in open outcry; and (ii) in a class in which the Exchange does not grant an electronic participation entitlement pursuant to Rule 6.45(a)(ii) and in which the Exchange did not appoint an Off-Floor LMM or Off-Floor DPM, the Exchange may appoint an On-Floor LMM that has open-outcry obligations only. If the Exchange in its discretion determines to reallocate a class in

which an Off-Floor LMM or Off-Floor DPM has been appointed, the On-Floor LMM appointment will automatically terminate.

**.02 – .04** No change.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the On-Floor LMM program. Currently, Rule 8.15, Interpretation and Policy .01 permits an LMM that is approved to operate as an Off-Floor LMM in one or more classes can request the Exchange authorize it to operate as an On-Floor LMM in those classes. Additionally, in an option class in which an Off-Floor LMM or Off-Floor Designated Primary Market-Maker ("DPM") has been appointed in accordance with Rule 8.15 or Rule 8.83, respectively, the Exchange in its discretion may appoint an On-Floor LMM (which may be the same firm or different firm serving as the Off-Floor LMM or Off-Floor DPM), which will be eligible to

receive a participation entitlement under Rule 8.15 with respect to orders represented in open outcry. Pursuant to Rule 8.15(b), in an option class in which both an On-Floor LMM and an Off-Floor DPM or Off-Floor LMM have been appointed, the On-Floor LMM will not be obligated to comply with the continuous electronic quoting obligation in subparagraph (i) or opening quoting obligation in subparagraph (v) (the Off-Floor LMM or Off-Floor DPM would be required to comply with those quoting obligations).

Pursuant to Rule 6.45(a)(ii), which permits the exchange to determine, on a class-by-class basis, certain priority overlays, including participation entitlements to LMMs (as well as DPMs and Preferred Market-Makers). The Exchange may grant an LMM a participation entitlement only if it has applied the priority customer overlay. LMMs operating on the trading floor may also receive a participation entitlement.<sup>3</sup> In exchange for eligibility to receive a participation entitlement, LMMs must, among other things, satisfy a heightened quoting obligation.<sup>4</sup> If the Exchange does not grant an electronic participation entitlement to a class, currently an LMM that operates off the floor is required to continue to satisfy the heightened electronic quoting obligation under the rules, even though it does not receive the benefit of an electronic participation entitlement (although it would continue to receive an open outcry participation entitlement if it also operates on the floor).

Therefore, under current Rules, the Exchange may appoint an On-Floor LMM in a class if there is also an Off-Floor LMM or Off-Floor DPM in that class (which, as noted above, the same firm or different firms may be operating as the On-Floor LMM and Off-Floor LMM or Off-Floor DPM). Additionally, the Rules provide an On-Floor LMM does not have to satisfy heightened

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<sup>3</sup> See Rule 8.15(d).

<sup>4</sup> Generally, LMMs and DPMs must provide continuous electronic quotes (for 90% of the time) in at least the lesser of 99% of the non-adjusted series or 100% of the non-adjusted series minus one call-put pair, while Market-Makers must provide continuous electronic quotes (for 90% of the time) in at least 60% of the series in their appointed classes.

electronic quoting standards if there is also an Off-Floor LMM or Off-Floor DPM in that class, who must satisfy those standards. However, the Rules do not expressly contemplate the Exchange appointing an On-Floor LMM in a class if it has not appointed an Off-Floor DPM or Off-Floor LMM in that class. Additionally, current Rules do not explicitly permit the Exchange to not impose a heightened electronic quoting obligation on an On-Floor LMM if there is no Off-Floor LMM or Off-Floor DPM (in other words, if the Exchange were to appoint an On-Floor LMM who operates only on the floor, and no Off-Floor LMM or Off-Floor DPM, the On-Floor LMM would still be required to satisfy heightened quoting standards). The proposed rule change explicitly states the Exchange may appoint an On-Floor LMM in a class, under specific circumstances (as further discussed below), even if there is no Off-Floor LMM or Off-Floor DPM in that class, which On-Floor LMM must satisfy certain floor-based obligations and is eligible for an open outcry participation entitlement, but will not have to satisfy heightened electronic quoting obligations and will not be eligible for an electronic participation entitlement. The proposed rule change merely expands the Exchange's flexibility with respect to appointing On-Floor LMMs in a circumstance not currently contemplated in the Rules – in classes in which it has not appointed an Off-Floor DPM or Off-Floor LMM – and specifies the obligations and entitlement in such a circumstance.

Specifically, the Exchange proposes to amend Rule 8.15, Interpretation and Policy .01 to permit the Exchange to appoint an On-Floor LMM to operate only on the trading floor with open-outcry obligations only in a class in which the Exchange appointed no Off-Floor LMM or Off-Floor DPM and does not grant an electronic participation entitlement pursuant to Rule 6.45(a)(ii) (in addition to classes in which the Exchange has appointed an Off-Floor DPM or LMM).<sup>5</sup> The

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<sup>5</sup> The Exchange may remove an On-Floor LMM in accordance with Rule 8.15 in the same manner as it may remove any other LMM appointed pursuant to Rule 8.15, including current On-Floor LMMs.

proposed rule change also amends Rule 8.15(b)(i) and (v) to provide an On-Floor LMM with open-outcry obligations only will not be obligated to comply with the continuous electronic quoting obligation in subparagraph (i) or opening quoting obligation in subparagraph (v), but must comply with the obligations of Market-Makers in Rule 8.7(d) and have a designee in the class's crowd on the trading floor for the entire trading day (except for a de minimis amount of time).<sup>6</sup>

The Exchange believes it is reasonable for an On-Floor LMM with open-outcry obligations only to be eligible for an open outcry entitlement, because priority customer orders in the book always receive priority over in-crowd market participants, including LMMs who may be eligible for an open outcry entitlement. Additionally, as proposed, the On-Floor LMM must satisfy the proposed heightened standard to be in the crowd for the entire trading day to be eligible for the open outcry entitlement.<sup>7</sup> The Exchange believes this standard is reasonable, as it understands On-Floor LMMs currently have designees present on the floor during the entire trading, because a designee must be present to participate in open outcry trades and receive open outcry participation entitlements on trades.<sup>8</sup>

If the Exchange eliminates an electronic participation entitlement from a class, the Exchange believes there is no incentive for a Market-Maker to satisfy a heightened electronic quoting standard in that class due to the allocation algorithm determined by the Exchange. The Exchange does not believe the open outcry participation entitlement is a sufficient benefit to balance the requirement to satisfy the heightened electronic quoting obligation (due to the significant electronic trading

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<sup>6</sup> For example, a de minimis time period may be the brief time during which a designee leaves the trading floor to purchase a beverage.

<sup>7</sup> See Rule 6.45(b)(i).

<sup>8</sup> If an On-Floor LMM has no designee on the trading floor at any time during the trading day, it could not receive an entitlement, as there is no one present to participate on any trade during that time. On-Floor LMMs may have multiple designees in the trading crowd.

volume) if an LMM or DPM is not also receiving an electronic participation entitlement. However, the Exchange believes it will benefit price discovery in the trading crowd for an LMM to be present in that class if it is eligible to receive a participation entitlement, even though there may be no LMM streaming quotes remotely. The proposed rule change will permit the Exchange to appoint an LMM to a trading crowd in this circumstance with an appropriate balance of floor-based benefits and obligations, consistent with the LMM's on-floor role.

The proposed rule change permits the Exchange to appoint an On-Floor LMM as it already can do pursuant to current Rules, which is appoint an On-Floor LMM that must satisfy regular market-maker quoting obligations rather than heightened LMM quoting obligations and only receive an open outcry participation entitlement (with the expectation a designee of the LMM will have a presence on the trading floor for the entire trading day). The proposed rule change merely provides the Exchange with discretion to make such an appointment in a different circumstance not currently contemplated in the Rules – in a class with no Off-Floor DPM or Off-Floor LMM. The Exchange may make such an appointment in the limited circumstance of classes in which it does not grant an electronic participation entitlement, and it will consider, among other factors, electronic liquidity in the class prior to making such an appointment. An On-Floor LMM in such a class will be subject to the same obligations and receive the same benefits as current On-Floor LMMs in other classes, subject to a different heightened quoting standard of maintaining a floor presence all day (subject to a de minimis exception) (which is expected of current On-Floor LMMs). Any violation of the proposed heightened quoting standard will be subject to potential discipline under Chapter XVII.<sup>9</sup>

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<sup>9</sup> Exchange regulatory staff are present on the trading floor and may detect violations of this obligation. Additionally, pursuant to Rule 17.2(a), Trading Permit Holders (including those in a trading crowd) may submit complaints to the Regulatory Division



The Exchange notes current On-Floor LMMs in classes in which there is a different Off-Floor DPM or Off-Floor LMM, as well as On-Floor LMMs in classes with no Off-Floor DPM or Off-Floor LMM pursuant to the proposed rule change, are not subject to the heightened electronic quoting obligation or opening quoting obligation in Rule 8.15(b), but receive the participation entitlement in Rule 8.15(d). While there is no current obligation in the rules requiring an On-Floor LMM to have a designee on the floor during the entire trading day, the Exchange expects current On-Floor LMMs to do so and may consider trading floor presence when determining whether to renew an On-Floor LMM's term.<sup>10</sup>

## 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>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</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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alleging violations of this obligation.

<sup>10</sup> See Rule 8.15(a)(i) (a factor to be considered by the Exchange when selecting LMMs includes presence in the trading crowd).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

is consistent with the Section 6(b)(5)<sup>13</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 promotes just and equitable principles of trade by creating a balance between the obligations imposed on and benefits provided to On-Floor LMMs that only operate on the trading floor and only have open-outcry obligations. The Exchange believes if an On-Floor LMM was obligated to satisfy a heightened continuous electronic quoting standard in a class in which there was no electronic participation entitlement, the obligations would outweigh the benefit of an open outcry entitlement. The proposed rule change imposes a more reasonable heightened open outcry obligation that balances the eligibility of the open outcry benefit, as the proposed rule change imposes an on-floor requirement to be eligible for the on-floor entitlement rather than an electronic quoting obligation unrelated to the corresponding potential entitlement.

The proposed rule change permits the Exchange to appoint an On-Floor LMM as it does pursuant to current Rules; it merely provides the Exchange with discretion to appoint an On-Floor LMM in a different circumstance – in a class with no Off-Floor DPM or Off-Floor LMM. Current rules do not contemplate an On-Floor LMM in a class with no Off-Floor DPM or Off-Floor LMM. An On-Floor LMM in such a class will be subject to the same obligations and receive the same benefits as current On-Floor LMMs in other classes, subject to a different heightened quoting standard of maintaining a floor presence for the entire trading day (subject to a de minimis exception), although current On-Floor LMMs are similarly expected have a designee present on the trading floor for the entire trading day. The proposed rule change removes impediments to and perfects the mechanism of a free and open market by providing

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<sup>13</sup>

Id.

flexibility to have an LMM in the trading crowd, which enhances price discovery and provides potential price improvement, in a class in which there is no incentive for a Market-Maker to satisfy a heightened electronic quoting standard due to the allocation algorithm determined by the Exchange in that class.

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 believes it is appropriate to limit its ability to appoint an On-Floor LMM with open outcry obligations only in classes in which it determines to have no electronic participation entitlement, as it wants to incentivize firms to remain LMMs (and provide liquidity) in the trading crowd when there is no incentive for firms to satisfy heightened electronic quoting standards. The Exchange will, among other factors, consider electronic liquidity in the class prior to making such an appointment. The Exchange believes the continued presence of an LMM in the trading crowd enhances price discovery and provides potential price improvement, and such requirement creates a balance with eligibility for an open outcry participation entitlement. The Exchange believes requiring an On-Floor LMM that operates only on the trading floor to satisfy heightened electronic quoting standards would outweigh the benefit of an open outcry only entitlement. The proposed rule change has no impact on intermarket competition, as it relates solely to the presence of an LMM on CBOE's trading floor.

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 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)<sup>14</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would permit the Exchange to appoint an On-Floor LMM as of September 1, 2017, which in turn would permit the market to benefit sooner from enhanced price discovery and the potential for price improvement. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission 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. The Exchange has satisfied this requirement.

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

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

with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>18</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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### 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-2017-059 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-2017-059. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2017-059, 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>19</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).