

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69528; File No. SR-CBOE-2013-048)

May 7, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 6.74A

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 02, 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 Rule 6.74A. 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) No change

(b) Auction Process. Only one Auction may be ongoing at any given time in a series and Auctions in the same series may not queue or overlap in any manner. The Auction may not be cancelled and shall proceed as follows:

(1) Auction Period and Request for Responses (RFRs).

(A) To initiate the Auction, the Initiating Trading Permit Holder must mark the Agency Order for Auction processing, and specify (i) a single price at which it seeks to cross the Agency Order (with principal interest or a solicited order) (a “single-price submission”), including whether the Initiating Trading Permit Holder elects to have last priority in allocation, or (ii) that it is willing to automatically match (“auto-match”) as principal the price and size of all Auction responses up to an optional designated limit price (“auto-match”) in which case the Agency Order will be stopped at the 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). Once the Initiating Trading Permit Holder has submitted an Agency Order for processing pursuant to this subparagraph, such submission may not be modified or cancelled.

(B) – (I) No change

(2) – (3) No change

*... Interpretations and Policies:*

**.01 – .08** 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 6.74A related to the Automated Improvement Mechanism ("AIM"). AIM allows a Trading Permit Holder (the "Initiating Trading Permit Holder") to submit an order it represents as agent (the "Agency Order") along with a contra-side second order (a principal order or a solicited order for the same size as the Agency Order) into an auction (an "Auction") for electronic execution.<sup>3</sup> During the Auction, other participants can compete with the Initiating Trading Permit Holder's second order to execute against the Agency Order, which guarantees that the Agency Order will receive an execution.<sup>4</sup> Initiating Trading Permit Holders must stop the Agency Order at the better of the national best bid or offer ("NBBO") or the Agency Order's limit price, if the Agency Order is for 50 standard contracts or 500 mini-option contracts or more, or at the better of one minimum

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<sup>3</sup> See Rule 6.74A.

<sup>4</sup> Id.

increment better than the NBBO or the Agency Order's limit price, if the Agency Order is for fewer than 50 standard contracts or 500 mini-option contracts.<sup>5</sup> Once an Auction commences, the Initiating Trading Permit Holder cannot cancel it.<sup>6</sup> Upon receipt of an Agency Order (and the Initiating Trading Permit Holder's second order), the Exchange will commence the Auction by issuing a request for responses ("RFR") detailing the side and size of the Agency Order.<sup>7</sup> The RFR will last for one second.<sup>8</sup> At the conclusion of an Auction, an Agency Order will be allocated at the best price(s) in accordance with the applicable matching algorithm rules for that class, subject to the allocation provisions of Rule 6.74A(b)(3).

Rule 6.74A(b)(1)(A) currently allows an Initiating Trading Permit Holder to enter its contra-side second order in one of two formats: (1) a single price or (2) a non-price specific commitment to auto-match all Auction responses received during the Auction. In this second case, the Initiating Trading Permit Holder would have no control over the match price. The Exchange is proposing to provide Initiating Trading Permit Holders with the additional option to auto-match competing prices from other market participants up to a designated limit price. The Initiating Trading Permit Holder will still not be able to cancel the auto-match instruction after an Auction commences and will have no control over the prices at which it receives an allocation of the Auction other than the outside boundary established by the designated limit price.

The Exchange notes that when an Initiating Trading Permit Holder selects the auto-match feature prior to the start of an Auction (with or without a designated limit price), the available

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<sup>5</sup> Rule 6.74A(a)(2) and (3).

<sup>6</sup> Rule 6.74A(b)(1)(A).

<sup>7</sup> Rule 6.74A(b)(1)(B).

<sup>8</sup> Rule 6.74A(b)(1)(C). Several types of events will cause an Auction to conclude. See Rule 6.74A(b)(2).

liquidity at improved prices increases, and the competitive final pricing is out of the Initiating Trading Permit Holder's control. The Exchange believes this proposed rule change will incent more Trading Permit Holders to initiate Auctions, because the additional flexibility encourages Trading Permit Holders willing to trade with Agency Orders at a price better than the NBBO, but only up to a certain price, to initiate an Auction. Additionally, this proposal provides the possibility that other TPHs may receive increased order allocations through AIM, which the Exchange believes could increase participation in Auctions. As a result, the Exchange expects the proposal will increase the number of Auctions, which would enhance competition in the Auctions and ultimately provide additional opportunities for price improvement over the NBBO for the Exchange's customers.

In support of this proposed rule change, the Exchange notes that each of the Automated Improvement Mechanism ("C2 AIM") of C2 Options Exchange, Incorporated ("C2"),<sup>9</sup> Price Improvement Period ("PIP") of Boston Options Exchange LLC ("BOX"),<sup>10</sup> and the Price Improvement Mechanism ("PIM") of International Securities Exchange, LLC ("ISE")<sup>11</sup> permits initiating participants to elect to auto-match up to a designated limit price.<sup>12</sup> The Exchange

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<sup>9</sup> See C2 Rule 6.51(b)(1)(A); see also Securities Exchange Act Release No. 34-66552 (March 9, 2012), 77 FR 15438 (March 15, 2012) (SR-C2-2011-043) (order approving, among other things, the option to auto-match up to a designated limit price).

<sup>10</sup> See BOX Rule 7150(f); see also Securities Exchange Act Release No. 34-61805 (March 31, 2010), 75 FR 17454 (April 6, 2010) (SR-BX-2010-022) (notice of filing and immediate effectiveness of rule change to implement the auto-match feature with the option to auto-match up to a designated limit price).

<sup>11</sup> See ISE Rule 723(d)(4); see also Securities Exchange Act Release No. 34-62644 (August 4, 2010), 75 FR 48395 (August 10, 2010) (SR-ISE-2010-61) (notice of filing and immediate effectiveness of rule change to implement the auto-match feature with the option to auto-match up to a designated limit price).

<sup>12</sup> AIM, C2 AIM, PIP and PIM have certain characteristics in common with each other. All three mechanisms (a) provide for the opportunity for customer price improvement, (b) have certain periods where the initial orders are exposed for potential price improvement,

believes that AIM, and in turn the customers that benefit from AIM, would be disadvantaged if Trading Permit Holders are not provided with the option to auto-match up to a designated limit price because this lack of flexibility reduces the number of Auctions and, as a result, opportunities for price improvement. Because C2, BOX, and ISE currently allow initiating participants the option to auto-match up to the best-priced response received during an auction or up to a designated limit price, the Exchange believes it is important for competitive purposes that it be able to offer the same opportunities for price improvement on CBOE through AIM.

The Exchange will provide the Commission with the following data: (1) the percentage of trades effected through AIM in which the Initiating Trading Permit Holder submitted an Agency Order with an auto-match instruction that included a designated limit price and the percentage that did not include a designated limit price; and (2) the average amount of price improvement provided to Agency Orders when the Initiating Trading Permit Holder submitted an auto-match instruction that included a designated limit price and the average amount that did not include a designated limit price, versus the average amount of price improvement provided to Agency Orders when the Initiating Trading Permit Holder submitted a single price (with no auto-match instruction).

## 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.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is

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(c) have certain guidelines regarding the types of orders that may be eligible for price improvement, and (d) have certain defined rules related to the allocation of trades within price improvement auctions.

<sup>13</sup> 15 U.S.C. 78f(b).

consistent with the Section 6(b)(5)<sup>14</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>15</sup> 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 the proposed rule change is a reasonable modification designed to provide additional flexibility for Trading Permit Holders to obtain executions on behalf of their customers while continuing to provide meaningful, competitive Auctions. The Exchange also believes that the proposed rule change will increase the number of and participation in Auctions, which will ultimately enhance competition in the Auctions and provide customers with additional opportunities for price improvement. The proposed rule change is consistent with the rules of other exchanges related to price improvement auctions and thus serves to remove impediments to and to perfect the mechanism for a free and open market and a national market system.

**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. All Trading Permit Holders that represent Agency Orders may initiate an Auction and have the

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<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> Id.

option to auto-match up to a designated limit price. Initiating Trading Permit Holders will not be required to designate such a limit price, and may still instead enter the contra-side order with a specified single price or auto-match all Auction responses. The Exchange believes that this additional flexibility for Trading Permit Holders to obtain executions on behalf of their customers while continuing to provide meaningful, competitive Auctions will increase the number of Auctions, which will ultimately enhance competition in the Auctions and provide customers with additional opportunities for price improvement. The proposed rule change also provides the possibility that other TPHs may receive increased order allocations through AIM, which the Exchange believes could increase participation in Auctions and further enhance competition.

CBOE believes that the proposed rule change will in fact relieve any burden on, or otherwise promote, competition. The Exchange believes the proposed rule change is procompetitive because it would provide Initiating Trading Permit Holders with the same flexibility as the rules at other exchanges that also permit initiating participants to elect to auto-match up to a designated limit price in those exchanges' price improvement auctions.<sup>16</sup> The Exchange believes that AIM, and in turn the customers that benefit from AIM, would be disadvantaged if Trading Permit Holders are not provided with the option to auto-match up to a designated limit price because this lack of flexibility reduces the number of Auctions and, as a result, opportunities for price improvement. Because C2, BOX, and ISE currently allow initiating participants the option to auto-match up to the best-priced response received during an auction or up to a designated limit price, the Exchange believes it is important for competitive purposes that it be able to offer the same opportunities for price improvement on CBOE through

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<sup>16</sup> See supra notes 9 – 11.



AIM. The Exchange believes adding this same flexibility will promote trading activity on the Exchange to the benefit of the Exchange, its Trading Permit Holders, and market participants.

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) of the Act<sup>17</sup> and Rule 19b-4(f)(6)<sup>18</sup> 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.

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:

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</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 at least five business days prior to the date of the filing of the proposed rule , or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2013-048 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-2013-048. 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 St NE, Washington D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2013-048, 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>

Kevin M. O'Neil  
Deputy Secretary

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