

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70844; File No. SR-CBOE-2013-103)

November 12, 2013

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

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 October 28, 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, 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 Rule 6.25 (Nullification and Adjustment of Options Transactions). 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

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

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

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

Exchange Rule 6.25 (Nullification and Adjustment of Options Transactions) governs the nullification and adjustment of options transactions. The Exchange is proposing to amend Rule 6.25(a)(1) to modify how the Exchange will nullify or adjust an obvious error. The Exchange believes this proposal will also harmonize its rules to more closely align with other options exchanges.<sup>3</sup>

Under the current rule 6.25(a)(1)(i), the Exchange will adjust the price of an erroneous transaction to the Theoretical Price when the transaction is between two market-makers unless such parties agree to adjust the transaction to a different price or bust the trade within fifteen minutes of being notified by Exchange Trading Officials of the error. Pursuant to current Exchange Rule 6.25(a)(1)(iv), transactions involving at least one non-CBOE market-maker will be adjusted to the Theoretical Price provided that the adjustment does not violate the non-CBOE market-maker's limit price unless both parties agree to adjust the transaction to a different price or agree to bust the trade within thirty minutes of being notified by Trading Officials of the error.

The Exchange is now proposing to amend Rule 6.25(a)(1) to modify the Exchange obvious error procedures by nullifying trades for transactions involving at least one non-broker-dealer customer and adjusting all other trades between groups that do not

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<sup>3</sup> See, e.g., International Securities Exchange, LLC ("ISE") Rule 720(b)(2).

fall into that category including for example, a market maker or a broker-dealer.<sup>4</sup> The Exchange believes that the proposal will eliminate some uncertainty in the current rule along with protect investors by eliminating confusion.

More specifically, the Exchange is first proposing to include all transactions in which neither party is a non-broker-dealer customer in the current Rule 6.25(a)(1)(i) instead of only including transactions between CBOE market-makers. In addition, the Exchange is proposing to limit the time in which these parties have to decide to adjust to a price other than the Theoretical Price or nullify the trade to ten minutes instead of the fifteen minutes that is currently allowed.<sup>5</sup> Next, the Exchange is proposing to add a provision to nullify all erroneous transactions where at least one party is a non-broker-dealer customer unless both parties agree to an adjusted price within thirty minutes. Finally, the Exchange is proposing to make cosmetic changes to Rule 6.25 by renumbering current provisions in 6.25(a)(1)(ii) and 6.25(a)(1)(iii) to 6.25(a)(1)(iii) and 6.25(1)(iv), respectively, and to make conforming changes to the references to these provisions in current Rules 6.25(b)(1) and 6.25.05.

The Exchange believes that the proposal will limit obvious error trade nullification only to transactions involving non-broker-dealer customers. The Exchange believes that this approach will limit the number of nullifications while assuring that non-

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<sup>4</sup> The Exchange is also proposing to add text to Exchange Rule 1.1(ff) (Voluntary Professional) and Rule 1.1(ggg) (Professional) to include a reference to Rule 6.25. These designations are done on the Exchange on an order by order basis. Thus, through reference, professional orders will be treated as broker-dealer orders. In addition certain non-broker-dealer customers may have their orders treated as broker-dealer orders rather than as public customer orders for purposes of Rule 6.25.

<sup>5</sup> Please note that that limiting the time frame to ten minutes would also align the Exchange with C2 Options Exchange, Incorporated (“C2”) Rule 6.15(b)(2).

broker-dealer customers will not have their erroneous trades adjusted through their limit price forcing such customer to spend (receive) more (less) money on erroneous transactions. In addition, the proposed changes to the rule will allow any non-professional customer orders to be subject to professional standards if that customer decides to designate an order as such.<sup>6</sup>

Non-broker-dealer customers are typically far less familiar with the day-to-day trading of the markets and are also less likely to be watching trading activity in a particular option throughout the day. Therefore, given the potential for drastic market swings, the Exchange believes that it is fair and reasonable and consistent with statutory standards to change the procedure for obvious errors involving at least one non-broker-dealer customer, and not for other market participants so as not to expose these customers to any additional risk. In addition, as stated above, these customers have the option of indicating they would like the treatment of their orders as if they originated from a professional.<sup>7</sup>

The proposed rule change is a fair way to address the issue of a trade executing through a non-broker-dealer customer's limit order price while balancing the competing interest of certainty that trades stand versus dealing with the true errors. The proposed rule change would continue to entail specific and objective procedures. Furthermore, the proposed rule change more fairly balances the potential windfall to one market participant against the potential reconsidering of a trading decision under the guise of an error. The Exchange also believes it is fair and reasonable to treat all professional market participants equally, e.g. market-makers, broker-dealers, etc.

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<sup>6</sup> See note 4 supra.

<sup>7</sup> Id.

As stated above, the Exchange believes that non-broker-dealer customers are far less familiar with the day-to-day trading of the markets and are also less likely to be watching trading activity in a particular option throughout the day. Therefore, the Exchange believes that it is fair and reasonable and consistent with statutory standards to change the procedure for obvious errors involving non-broker-dealer customers, and not for other market participants so as not to expose these customers to any additional risk. In addition, as stated above, these customers have the option of indicating they would like the treatment of their orders as if they were from professionals.<sup>8</sup>

Finally, the Exchange believes that the proposal to change the time to ten minutes, instead of fifteen minutes, for professional parties to agree to a different price or nullify the transaction under Exchange Rule 6.25(a)(1)(i) not only gives ample time for review by the parties to the trades, but it more closely aligns the Exchange's rule to other options exchanges.<sup>9</sup> The Exchange also believes that the administrative re-numbering of the provisions in Rule 6.25 eliminate further confusion in the current rule.

## 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>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to prevent

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<sup>8</sup> Id.

<sup>9</sup> See note 3 supra. See also note 5 supra.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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>12</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposal to nullify all erroneous transactions in which at least one non-broker-dealer customer is a party to the transaction and adjusting all other trades will help market participants to better hedge risk associated with these potentially erroneous transactions. By nullifying erroneous transactions which involve a non-broker-dealer customer, the Exchange is assuring that these non-professional customers will not receive a trade at a higher (lower) price than a limit price placed upon the transaction. In addition, the proposal is requiring trades in most circumstances to be honored. The proposal also allows for all parties to nullify any erroneous transaction as long as the two parties come to an agreement within ten minutes. The Exchange believes that the shorten time will require the agreement to be made more quickly, and thus a nullification or adjustment to a different price create less of a disruption to the overall market.

The Exchange believes that adjusting all transactions that do not involve a non-broker-dealer customer is just and equitable because professional customers are more sophisticated and familiar with the day to day trading swings. Though, as proposed, a

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<sup>12</sup> Id.

professional that is not a market-maker may be adjusted through its limit price, the Exchange believes these professionals have adequate resources in place to manage this adjustment and would prefer the certainty of the proposed changes and to adjust these transactions (rather than nullify) to continue to hedge their risk. In addition, the Exchange believes that market-makers and other professionals are similarly situated, and, thus, it is consistent to treat these groups in the same manner. Moreover, the market benefits from the least amount of nullifications because parties have more certainty about their executions. The Exchange also believes that assessing an adjustment penalty will encourage professionals to adjust and nullify a lesser amount of transactions which will benefit the market as a whole. Thus, the Exchange believes that the treatment of all professional orders in the same manner is consistent with the Act as it will allow the market to suffer fewer disruptions, in the form of adjustments or nullifications of trades after the fact, and treats similarly situated groups, namely market-makers and other professionals, in the same manner. The Exchange also notes that aligning the Exchange with other options exchanges will ensure less disruption to market participants as they will be treated consistently across the markets.<sup>13</sup>

Though the proposal will treat groups of market participants differently, the Exchange believes that the proposal is not unfairly discriminating because it treats similarly situated groups in the same manner. More specifically, all professionals will be treated in a similar manner while non-professional customers will also be left with the choice to designate an order as professional, under Exchange Rule 1.1(fff) and thus have the ability to be treated in the same manner as a professional. With this choice, all groups

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<sup>13</sup> See note 7 *supra*.

may be treated in the same manner. In addition, the proposal creates a safeguard for a non-professional customer that may not be as familiar with the specifics of every day trading (and does not choose to be treated as a professional) by nullifying all erroneous transactions in which they are a party.

The Exchange acknowledges that the proposal may allow for some uncertainty to regarding whether a trade will be adjusted or nullified depending upon the nature of the parties to the transaction. More specifically, the contra party will not know the category of the other party. Nonetheless, the Exchange believes the proposal continues to promote just and equitable principles of trade and protect investors and the public interest because it eliminates a more serious uncertainty of price uncertainty which is inherent in the current Exchange rule because the current rule takes the non-broker-dealer customer's limit price into consideration while this proposal does not as it will be nullified unless agreed upon by the two parties. The Exchange also notes that this rule is substantially similar to another option exchange.<sup>14</sup> Thus, market participants will receive similar treatment in the [sic] across the markets which eliminates confusion and promotes just and equitable principles of trade.

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. Specifically, the proposal is meant to eliminate market participant confusion along with help market participants to better hedge the risk associated with erroneous options trades. CBOE believes that the proposed rule change will relieve any burden on, or otherwise

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<sup>14</sup> See note 31 supra.



promote, competition because it creates less uncertainty about the treatment of erroneous trades which may encourage market participants to trade on the Exchange.

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:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. 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>15</sup> and Rule 19b-4(f)(6)<sup>16</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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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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).

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-2013-113 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-2013-103. 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-2013-103 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).