

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71371; File No. SR-CBOE-2014-001)

January 23, 2014

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule to Amend CBOE's Rules to Enhance the Independence and Integrity of the Regulatory Functions of the Exchange

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 January 10, 2014, the 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

CBOE proposes to amend its rules to enhance the independence and integrity of the regulatory functions of the Exchange. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 self-regulatory organization 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 those 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 parts 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 certain rules to enhance the independence and integrity of the regulatory functions of the Exchange. Specifically, the Exchange seeks to amend Rule 2.1 (Committees of the Exchange), Rule 4.4 (Gratuities), Rule 17.2 (Complaint and Investigation), Rule 17.3 (Expedited Proceeding), Rule 17.4 (Charges), Rule 17.8 (Offers of Settlement) and Rule 17.50 (Imposition of Fines for Minor Rule Violations).

First, the Exchange proposes to amend Rule 2.1 (Committees of the Exchange). Rule 2.1 currently provides that the Chief Executive Officer (“CEO”) shall appoint the chairman, vice-chairman and members of the Exchange Committees, as well as fill vacancies and remove members of the Exchange Committees. The Exchange proposes to adopt an exception to that rule. Particularly, the Exchange proposes to provide that the Nominating and Governance Committee, with the approval of the Board, shall appoint the chairman, vice-chairman and members of the Business Conduct Committee (“BCC”), as well as fill vacancies in the BCC and that the Board shall have the ability to remove any member of the BCC, at any time, with or without cause. The Nominating and Governance Committee is comprised of at least five (5)

Directors and is a standing committee of CBOE's Board of Directors. The BCC is an Exchange Committee charged with handling disciplinary matters that arise from Exchange business. The BCC additionally reviews recommendations by the Exchange's Regulatory staff and authorizes the issuance of formal charges arising out of the matters investigated or examined by the Regulatory Services Division. Given the BCC's responsibilities, the Exchange believes that authority relating to the composition of the BCC should rest with the Nominating and Governance Committee, rather than the CEO. Additionally, the Exchange believes that the power to remove members of the BCC should rest with the Board, rather than the CEO. This transfer of authority enhances the independence of the regulatory functions of the Exchange.

Next, the Exchange seeks to amend Rule 4.4 (Gratuities). Rule 4.4 provides that a Trading Permit Holder ("TPH") may not give any compensation or gratuity in any one year in excess of \$50.00 to any employee of the Exchange or in excess of \$100.00 to any employee of any other TPH or of any non-TPH broker, dealer, bank or institution, without the prior consent of the employer and of the Exchange. Additionally, the Exchange's Conflict of Interest Policy ("Policy") currently prohibits Regulatory Services Division and Office of Enforcement employees from accepting any gift of more than nominal monetary value (e.g., a coffee mug) from any TPH or associated person of a TPH. In unique circumstances, the Policy provides that an exception may be granted by the Division Head or, for the Division Head, by the President. The Exchange is proposing to amend Rule 4.4 to provide that a TPH may not give any compensation or gratuity of any monetary value to any Regulatory Services Division or Office of Enforcement employee.⁵ The Exchange does not believe that its Regulatory Services Division or Office of Enforcement employees should be permitted to receive gifts or gratuities of even a

⁵ The Exchange intends to make conforming changes to its Policy upon the effectiveness of this proposed rule change.

nominal value from TPHs or their associated persons, in light of the responsibility of these Exchange employees for regulatory matters involving TPHs and their associated persons.

The Exchange also proposes to amend Rule 17.2 (Complaint and Investigation) to eliminate the authority of the President, other Exchange officials designated by the President, the Board, or the BCC to order an investigation of possible violations within the disciplinary jurisdiction of the Exchange and provide instead that only the Exchange's Regulatory staff, and any successor thereto, in its sole discretion shall determine whether to investigate or examine possible violations within the disciplinary jurisdiction of the Exchange. The Exchange believes providing Regulatory staff sole discretion as to what matters to investigate or examine further supports and provides for the autonomy and independence of the Exchanges' regulatory functions as well as helps to ensure that all decisions regarding resolution of any examination, investigation, or prosecution shall be made without regard to the actual or perceived business interests of the Exchange or any of TPHs. The Exchange notes that the Board, President, and BCC, along with other Exchange employees and Trading Permit Holders, will continue to have the ability to submit oral or written complaints alleging possible violations within the disciplinary jurisdiction of the Exchange. The Exchange additionally notes that the proposed rule change conforms its rules to its current practice. The Exchange also proposes to clarify that Regulatory staff has the sole discretion to determine whether to request that the BCC authorize the issuance of a statement of charges pursuant to Rule 17.4 (Charges), which will add transparency to the rules regarding Regulatory staff's role and responsibilities.

The Exchange also seeks to amend Rule 17.2 to provide that the Regulatory staff shall have the sole discretion to determine whether to request that the BCC authorize the issuance of a statement of charges pursuant to Rule 17.4. In those instances where an investigation results in

the Regulatory staff finding that there are reasonable grounds to believe that a violation has been committed and a formal regulatory action (i.e., Statement of Charges) is warranted, Regulatory staff will submit a written report of its investigation to the BCC.⁶ Additionally, the Exchange proposes to provide in those instances where an investigation results in the Regulatory staff finding that there are reasonable grounds to believe that a violation has been committed, but non-formal regulatory action (i.e., a Letter of Information, a Letter of Caution or a Staff Interview) is warranted in lieu of the issuance of a statement of charges, the Regulatory staff will have the power and authority in its sole discretion to impose such non-formal regulatory action without the submission of a written report of its investigation to the BCC. Further, the Exchange proposes to provide that in the event the Regulatory staff finds in its sole discretion that there are not reasonable grounds to believe that a violation has been committed, the Regulatory staff will close the investigation (i.e., File Without Action) without the submission of a written report of its investigation to the BCC. The Exchange believes that this proposed rule change further supports and provides for the autonomy and independence of the Exchanges' regulatory functions as well as makes explicit in the rules the roles and responsibilities of Regulatory staff. Finally, the Exchange proposes to add Interpretation and Policy .05 to Rule 17.2 to make clear that references to "Regulatory staff" in Chapter XVII, mean the Exchange's employees in the Regulatory Services Division.

In addition, the Exchange seeks to make explicit in the Rules the roles and responsibilities of certain Exchange staff. First, the Exchange proposes to replace references to

⁶ Pursuant to CBOE Rule 17.10, the Regulatory Oversight and Compliance Committee will review any decision not to authorize the issuance of statements of charges that were recommended by Regulatory staff, and refer such matters to the Board of Directors for further review, as appropriate. The Board of Directors may order review of such decisions, and may affirm, reverse or modify, in whole or in part, the decision of the BCC not to authorize the issuance of statement of charges.

“Exchange” with “Regulatory staff” in Interpretation and Policies .01, .03, and .04 of Rule 17.2 to make clear that those references are to Regulatory staff, in particular. The Exchange also seeks to make similar clarifications in Rule 17.3 (Expedited Proceeding), Rule 17.4 (Charges), Rule 17.8 (Offers of Settlement), and Rule 17.10 (Review). Particularly, Rule 17.3 governs expedited proceedings, Rule 17.4 governs if and how statement of charges is to be issued, Rule 17.8 governs Offers of Settlement, and Rule 17.10 governs the review by the Board of Directors of decisions related to the disciplinary process. Each of the aforementioned rules sets forth the respective duties and responsibilities of “staff” as it relates to either expedited proceedings, statement of charges and offers of settlement. The Exchange believes however, that the term “staff” is vague and does not provide clarity as to which staff has certain roles and authorities under these rules, which historically, has been the Regulatory staff. Accordingly, the Exchange wishes to make it explicitly clear that the “staff” referred to in these rules is the Exchange’s Regulatory staff, which will provide additional clarity and reduce confusion. The Exchange notes this is a clarifying, non-substantive change. The Exchange also proposes to amend Rule 17.10(d) to correct the reference to the Regulatory Oversight and Compliance Committee.

Finally, the Exchange also proposes to amend Rule 17.50 (Imposition of Fines for Minor Rule Violations). Rule 17.50 provides that in lieu of commencing a disciplinary proceeding pursuant to Rule 17.2, the Exchange may, in certain instances, impose a fine on a TPH or associated person of a TPH with respect to certain rule violations. More specifically, subparagraph (c) of Rule 17.50 provides that any person against whom a fine is imposed pursuant to certain subsections of Rule 17.50 (e.g., violation of position and exercise limit rules or Locked or Crossed Market violations) may contest the Exchange’s determination by filing a written answer and have the matter become subject to the review of the BCC. Additionally, the

filing may request a hearing, if desired, which would be subject to Rule 17.6, which rule governs hearings before the BCC. Rule 17.50(c) also provides that for violations of trading conduct and decorum policies in particular, a person may only contest the determination to the BCC if the fine exceeds \$2,500. Pursuant to subparagraph (d) of Rule 17.50, if the fine for violations of trading conduct and decorum policies does not exceed \$2,500, the individual may still contest the Exchange's determination, but the matter would become subject to the review of the Appeals Committee, rather than the BCC and, if requested, any hearing would consequently be subject to the hearing procedures set forth in Chapter 19 (Hearings and Review). Similarly, fines imposed for failure to submit trade data on trade date, regardless of the amount, may be contested but will also become subject to the review of the Appeals Committee, instead of the BCC. Moreover, Interpretation and Policy .04 provides that the BCC may consolidate into one hearing the review of (i) a fine imposed for violations of trade conduct and decorum policies that exceeds \$2,500 and (ii) a fine imposed for violations of trade conduct and decorum policies that does not exceed \$2,500, so long as the alleged violations involve the same or related transaction or occurrence and the review is not based on written submissions. The Exchange proposes to eliminate the distinction between the type of violations set forth in Rule 17.50 by eliminating subparagraph (d) of Rule 17.50 in its entirety and provide instead that all violations set forth in paragraph (g) of Rule 17.50 may be contested to the BCC and, if requested, subject to the hearing procedures of Rule 17.6. Given the BCC's role and responsibilities noted above, the Exchange believes that the BCC is the appropriate committee to review and/or hear contests to fines imposed due to non-compliance with certain Exchange rules. Particularly, the Exchange believes the BCC should review and/or hear all contests to fines imposed pursuant to section (g) of Rule 17.50 in its entirety, including violations for trade conduct and decorum policies and failure to submit

trade data on trade date. The proposed change also provides consistency and certainty as to how all contests to fines imposed pursuant to section (g) are handled.

Lastly, the Exchange proposes to delete language in subparagraph (c)(3) of Rule 17.50. More specifically, Rule 17.50(c)(3) currently provides that among others, any member of the Board may require a review by the Board of any determination made by the BCC under this rule. The Exchange proposes to eliminate the language “any member of” to provide that an individual Board member cannot alone require a review, but rather the request for a review must be a Board action. The Exchange believes that it is appropriate for the Board to determine whether to request review of a determination of the BCC under Rule 17.50, as opposed to an individual Board member, and notes that such change is consistent with Rule 17.10 relating to the Board’s authority to review decisions by the BCC made pursuant to Rules 17.7 and 17.9.

2. Statutory Basis

The Exchange believes the proposed rule changes are 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.⁷ Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)⁸ 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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

investors and the public interest. The Exchange also believes the proposed rule changes are consistent with the Section 6(b)(7)⁹ requirements that the rules of an exchange provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.

In particular, the Exchange believes that the elimination of: (i) the CEO's authority relating to the composition of the BCC and (ii) the President, (or Exchange Official designated by the President), the Board, and BCC's authority to order the investigation of a possible violation within the disciplinary jurisdiction of the Exchange aligns the CBOE Rules with the Exchange's current practices and provides for further separation of those responsible for the business activities of the Exchange from the decision-making structure over the regulatory process. This separation enhances the Exchange's disciplinary and regulatory process by furthering the independence of its regulatory process and reducing a potential conflict of interest, as well as an appearance of inappropriate influence, thereby ensuring an effective and fair disciplinary process and promoting just and equitable principles of trade and protecting investors and the public interest investors and public interest.

Additionally, the Exchange believes the proposed rule change to Rule 4.4 further enhances the independence of the Regulatory Services Division and Office of Enforcement and eliminates a potential conflict of interest, as well as an appearance of influence, thereby promoting an effective and fair disciplinary process and enhancing the protection of investors and the public interest.

⁹ 15 U.S.C. 78f(b)(7).

The Exchange also believes that clarifying the CBOE Rules to explicitly state that Regulatory staff has sole discretion as to what matters to investigate or examine further supports and provides for the autonomy and independence of the Exchanges' regulatory functions as well as helps to ensure that all decisions regarding resolution of any examination, investigation, or prosecution shall be made without regard to the actual or perceived business interests of the Exchange or any of TPHs, thereby enhancing the protection of investors and the public interest. Additionally, the Exchange believes that providing Regulatory staff sole discretion to (i) impose non-formal regulatory action without the submission of a written report of its investigation to the BCC in those instances where an investigation results in the Regulatory staff finding that there are reasonable grounds to believe that a violation has been committed or (ii) close an investigation without submission of a written report of its investigation to the BCC where Regulatory staff finds that there are not reasonable grounds to believe that a violation has been committed, further supports and provides for the autonomy and independence of the Exchanges' regulatory functions as well as makes explicit in the rules the roles and responsibilities of Regulatory staff.

The Exchange also believes that replacing vague references to "Exchange" and "Staff" with "Regulatory staff," in Chapter 17 makes it explicitly clear which staff has certain roles and responsibilities delegated under these rules, thereby eliminating potential confusion. Finally, the Exchange believes that given the BCC's charged role and responsibilities, the BCC is the appropriate committee to review and/or hear contests to fines imposed pursuant to section (g) of Rule 17.50 in its entirety, including violations for trade conduct and decorum policies and failure to submit trade data on trade date. The Exchange believes this proposed rule change also

provides consistency as to how contests to fines imposed pursuant to section (g) of Rule 17.50 are handled.

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 does not believe that the proposed rule change will impose any burden on intramarket competition because it applies to all TPHs. The Exchange does not believe the proposed rule changes will impose any burden on intermarket competition as it will merely enhance the independence of its regulatory decision-making and eliminate gratuities from TPHs to employees of the Regulatory Services Division or Office of Enforcement that might appear to undermine that independence.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6)

pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)¹³ 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

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-2014-001 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-2014-001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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

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 CBOE. 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

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.

to File Number SR-CBOE-2014-001 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).