

February 4, 2015

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change to Amend Rules 6.41 and 24.8

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 January 22, 2015, 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**

CBOE proposes to add an interpretation to each of Rules 6.41 and 24.8. The text of the proposed rule change is provided below.

(additions are in *italics*; deletions are [bracketed])

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**Chicago Board Options Exchange, Incorporated Rules**

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**Rule 6.41. Meaning of Premium Bids and Offers**

(a) – (c) No change.

**. . . Interpretations and Policies:**

**.01 When a customer submits to a Trading Permit Holder for open outcry handling a complex order with a total cash price (the “total order price”) and the total number of contracts for each leg, if pricing the legs for execution would result in a difference between the total execution price and the**

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

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

total order price, the Trading Permit Holder must resolve the difference in a manner that provides price improvement to the customer (i.e. the broker must determine leg prices that correspond to a total purchase (sale) price that is less (greater) than the total order price).

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## **Rule 24.8. Meaning of Premium Bids and Offers**

No change.

### **. . . Interpretations and Policies:**

**.01** When a customer submits to a Trading Permit Holder for open outcry handling a complex order with a total cash price (the “total order price”) and the total number of contracts for each leg, if pricing the legs for execution would result in a difference between the total execution price and the total order price, the Trading Permit Holder must resolve the difference in a manner that provides price improvement to the customer (i.e. the broker must determine leg prices that correspond to a total purchase (sale) price that is less (greater) than the total order price).

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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 Exchange proposes to adopt Interpretation and Policy .01 to each of Rules 6.41 and 24.8 to describe the process of establishing final leg execution prices when a broker receives

from a customer a complex order for open-outcry handling at a total cash price for the order. Rules 6.41 (with respect to equities) and 24.8 (with respect to indexes) provide that bids and offers must be expressed in terms of dollars per unit of the underlying security or index, as applicable.<sup>3</sup> However, the Exchange understands that a customer will sometimes express interest in executing a complex order at a total cash price for the order (rather than at a price per contract for each leg) (the “total order price”) and the total number of contracts of each leg. In this situation, the broker may represent the order to the trading crowd at the total order price, and Trading Permit Holders in the trading crowd may respond to trade with the order at that total order price. Due to the complexity of the order and the price and number of contracts involved, there may be instances in which the complex order may not break down into a per-unit price for each leg based on the existing market for the leg that corresponds to the total order price. When this occurs, the broker resolves any difference in a manner that provides price improvement to the customer (i.e. the broker must determine leg prices that correspond to a total purchase (sale) price that is less (greater) than the total order price). The proposed rule change codifies in its rules the requirement that Trading Permit Holders resolve any difference between the total order price and total execution price in this manner.

For example, suppose a customer sends to its broker a complex order in class XYZ to buy 371 July 50 Calls and buy 400 July 50 Puts for a total order price of \$96,920. The market for July 50 Calls is 1.21 – 1.22, and the market for the July 50 Puts is 1.29 – 1.30. The floor broker represents the order to the trading crowd, and two Market-Makers respond with a willingness to participate in the trade (the floor broker is unable to reasonably determine the sequence in which

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<sup>3</sup> Additionally, Rule 6.44 requires that bids and offers made on the trading floor be for one option contract unless a specific number is expressed in the bid or offer.

the Market-Makers responded so determines to apportion the order equally).<sup>4</sup> They establish a per-contract price of 1.21 for the July 50 Calls and 1.30 for the July 50 Puts. Because there is an uneven number of July 50 Calls, in splitting up the order, one Market-Maker (“Market-Maker A”) agrees to sell 185 July 50 Calls, and the other Market-Maker (“Market-Maker B”) agrees to sell 186 July 50 Calls, and Market-Makers A and B each agree to sell 200 July 50 Puts.<sup>5</sup> These market participants execute the trade at the leg prices set forth above: Market-Maker A sells the July 50 Calls for \$22,385 ( $\$1.21 \text{ price/share} \times 100 \text{ shares/contract} \times 185 \text{ contracts} = \$22,385$ ) and the July 50 Puts for \$26,000 ( $\$1.30 \text{ price/share} \times 100 \text{ shares/contract} \times 200 \text{ contracts} = \$26,000$ ), and Market-Maker B sells the July 50 Calls for \$22,506 ( $\$1.21 \text{ price/share} \times 100 \text{ shares/contract} \times 186 \text{ contracts} = \$22,506$ ) and the July 50 Puts for \$26,000 ( $\$1.30 \text{ price/share} \times 100 \text{ shares/contract} \times 200 \text{ contracts} = \$26,000$ ). Therefore, the customer’s total purchase price is \$96,891 ( $\$22,385 + \$22,506 + \$26,000 + \$26,000$ ), which represents price improvement of \$29 to the customer’s total order price. Pursuant to the proposed rule change, the broker and Market-

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<sup>4</sup> Rules 6.45 (with respect to options that do not trade on the Hybrid trading system), 6.45A(b) (with respect to equity options that trade on the Hybrid trading system), and 6.45B(b) (with respect to index and exchange-traded fund options that trade on the Hybrid trading system) sets forth the allocation and priority rules for orders represented in open outcry. Generally, when there are multiple bids (offers) at the best price, public customer orders have first priority (multiple public customer orders at the same price are ranked based on time priority), then orders of other market participants are prioritized by time (for classes on the Hybrid trading system, in-crowd market participants have priority ahead of market participants with orders or quotes in the electronic book). If the sequence in which bids (offers) were made cannot reasonably be determined, then priority will be apportioned equally.

<sup>5</sup> As described above, if the floor broker cannot reasonably determine the sequence in which the Market-Makers responded, it should apportion the order equally. The allocation and priority provisions for open outcry trading do not address to which market participant the “extra” contract should be allocated. See Rules 6.45, 6.45A(b) and 6.45B(b). Generally, the market participants involved in the transaction will agree which one should receive the extra contract; ultimately the Trading Permit Holder representing the order (in this example, the floor broker) reasonably determines how to allocate the order in accordance with the applicable rule.

Makers could not execute the order at, for example, \$1.22 for the July 50 Calls and \$1.30 for the July 50 Puts, because the total purchase price for the customer would be \$97,262, which is higher than the customer's total order price.<sup>6</sup> Brokers may not be able to execute a complex order at a customer's exact total order price because the current markets for the legs and allocation among Trading Permit Holders may not break down in such a manner. In addition, brokers must exercise due diligence and obtain the best price for their customers and comply with the Exchange's rules regarding minimum increments and complex order priority.<sup>7</sup> The Exchange believes the proposed rule change eliminates any potential confusion in the rules regarding how Trading Permit Holders in the trading crowd must determine the leg execution prices of these orders in these situations.

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<sup>6</sup> This process of leg price determination becomes far more complicated and time-consuming for complex orders with more than two legs or when there are more than two responses from Trading Permit Holders (which occurs regularly). The purpose of this filing is to simplify this process (to the potential benefit of customers) so that executions of these complex orders can be completed more quickly.

<sup>7</sup> Complex orders may be executed at a net debit or credit price with another Trading Permit Holder without giving priority to equivalent bids (offers) in the individual leg series that are represented in the trading crowd or in the public customer limit order book provided at least one leg of the order betters the corresponding bid (offer) in the public customer limit order book by at least one minimum trading increment or \$0.01, as applicable. The Exchange intends to make explicit in its rules in a separate rule filing that a complex order (with any number of legs and in any ratio) may be represented on the Exchange; however only those complex orders that satisfy certain requirements (such as ratio requirements) are eligible for this complex order priority, as well as other special complex order treatment under the rules (such as the ability to execute complex orders at minimum increments different than simple orders). The proposed rule change in this filing applies to all complex orders (both eligible and noneligible for complex order priority and treatment). A complex order must continue to satisfy eligibility requirements in the rules to receive such priority and treatment (complex orders that do not satisfy those eligibility requirements do not receive such priority and treatment). See Rule 6.42 (minimum increment for complex orders) and Rules 6.45(e), 6.45A(b)(ii) and 6.45B(b)(ii) (complex order priority exception).

The proposed rule change does not amend the allocation or priority rules for open outcry trading.<sup>8</sup> For example, if a customer submitted an order in class XYZ to buy 371 July 50 Calls for \$1.21 and 400 July 50 Puts for \$1.30, the order would execute in the same manner (with respect to allocation and priority) as the order originally communicated with a total order price in the example above. The legs would be required to trade in accordance with Exchange pricing rules, including the requirement to trade at prices at the applicable increment for the class that are at or better than the Exchange's best bid or offer, and the complex order priority rule.<sup>9</sup> Similarly, in both situations, the order would be allocated to the two responding Market-Makers in time priority, or apportioned equally if the floor broker could not reasonably determine the sequence in which the Market-Makers responded (as was done in the example above). Thus, the proposed rule change does not impact how complex orders trade in open outcry; it only makes explicit in the rules that Trading Permit Holders must handle orders for which the customer's total order price does not equal the total execution price in a manner that ensures any price improvement accrues to the customer.

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<sup>8</sup> See id.

<sup>9</sup> As set forth above, to be eligible for complex order priority in open outcry, one leg would have to improve the best public customer price of the strategy by \$0.01 for the order to receive complex order priority. See id. In the initial example above, the leg price for the July 50 Puts improved on the market, so the July 50 Calls could receive priority over all other orders and quotes at the leg execution price, which was the best bid. The complex order would not have been eligible for complex order priority had it executed at leg prices of \$1.21 (for the July 50 Calls) and \$1.29 (for the July 50 Puts). The Exchange notes that each strategy must execute at least at these prices to receive the priority (in this example, all 371 calls and 400 puts must have prices of \$1.21 or[sic] \$1.29[sic], respectively, or better to qualify for complex order priority). The Commission notes that the Exchange incorrectly noted in the previous sentence that to receive priority, the strategy in the example must have prices of \$1.21 or \$1.29. The Exchange clarified in an email that the sentence should have stated that to receive priority, the strategy must have prices of \$1.21 and \$1.30. See Email to David Hsu, Assistant Director, Division of Trading and Markets, Commission from Laura Dickman, Senior Attorney, CBOE, dated February 2, 2015.

## 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>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 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.

The Exchange believes that specifying in its rules how Trading Permit Holders must handle complex orders submitted by customers with a total order price rather than individual leg prices protects investors and the public interest, because it ensures that price improvement accrues to the customer. The Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because, even though the proposed rule changes provides customers with benefits. The Exchange believes it is appropriate to ensure price improvement accrues to customers because they send orders from off the Exchange and are not in a position to adjust their prices like the market participants on the

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

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

<sup>12</sup> Id.

floor executing the orders. In addition, the proposed rule change is consistent with the long-established history in the options industry of providing beneficial treatment to customers in various circumstances (such as providing for public customer priority in trade allocations) for the purpose of encouraging continuing customer investment.

The Exchange notes that the proposed rule change does not amend the allocation or priority rules for open outcry trading, including the complex order priority exception. Any orders represented to the crowd at a customer's total order price will execute in accordance with the Exchange's current allocation and priority rules, and will execute in the same manner as order represented at individual leg prices. In addition, the Exchange notes that orders represented to the crowd at a customer's order price must execute at the applicable increment for the class (or the complex order minimum increment if eligible) and in accordance with all other pricing rules. The proposed rule change merely addresses how brokers that receive customer orders with a total order price must handle those orders and simplifies the process of determining the leg prices for such order to accelerate the executions of complex orders.

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 brokers that receive complex orders from customers at a total order price must comply with the proposed rule change. Additionally, these complex orders will trade in the same manner as, including in accordance with allocation, priority and pricing rules applicable to, complex orders that brokers receive from customers with individual leg prices. All complex orders must continue to satisfy eligibility requirements in the rules to receive complex order priority and other complex order treatment. While the proposed rule change provides customers with benefits, the Exchange believes it is appropriate to ensure price improvement accrues to

customers because they send orders from off the Exchange and are not in a position to adjust their prices like the market participants on the floor executing the orders. In addition, the proposed rule change is consistent with the a long-established history in the options industry of providing beneficial treatment to customers in various circumstances (such as providing for public customer priority in trade allocations) for the purpose of encouraging continuing customer investment. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition because the proposed rule change relates to the form in which customer orders may be presented to the Exchange for execution, not how orders may be allocated or prioritized. To the extent the proposed change makes CBOE a more attractive marketplace for customers to submit orders, those customers may elect to become CBOE 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**

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-2015-010 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-2015-010. 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, D.C. 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-2015-010 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>13</sup>

Brent J. Fields  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).