

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74665; File No. SR-CBOE-2015-037)

April 7, 2015

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Exchange's Arbitration Forum

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 April 1, 2015, Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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

The Exchange proposes to adopt new Rule 18.1A relating to arbitration. The text of the proposed rule change is available at the Exchange's Office of the Secretary, on the Exchange's website at <http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>, and at the Commission's Public Reference Room.

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 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 new Rule 18.1A. Specifically, the Exchange proposes to adopt new Rule 18.1A which would govern all arbitration claims submitted to the Exchange after the proposed rule change becomes operative ("Effective Date"). By way of background, the Exchange currently offers an arbitration facility for any of its Trading Permit Holders ("TPHs"), associated persons, or their customers to arbitrate disputes, claims, or controversies arising out of Exchange business. The Exchange's arbitration program is governed by Chapter XVIII of the CBOE Rules.

The Exchange recently entered into a Regulatory Services Agreement ("RSA") with the Financial Industry Regulatory Authority, Inc. ("FINRA"), pursuant to which FINRA, among other things, will provide certain services pertaining to dispute resolution. As such, CBOE would cease to administer an arbitration program for all claims after the Effective Date. More specifically, all arbitration claims filed on and after the Effective Date would be administered by FINRA pursuant to the RSA and the Exchange would continue to administer its arbitration program for all claims filed prior to the Effective Date.

Additionally, the Exchange notes that the rules governing the administration of any particular arbitration would depend on the date the case was filed. This would help ensure that any person that filed an arbitration claim under a particular set of arbitration rules would continue to have the case administered pursuant to those rules through the case's conclusion. Particularly, CBOE Rules 18.1-18.37, with the exception of proposed CBOE Rule 18.1A, would continue to apply to CBOE arbitration cases pending prior to the Effective Date.⁵ Thereafter, claims involving TPHs, associated persons of TPHs, and/or customers would be arbitrated under the FINRA Code of Arbitration Procedure for Customer Disputes, the FINRA Code of Arbitration Procedure for Industry Disputes (together, "FINRA Codes of Arbitration"), and proposed new Rule 18.1A.

Proposed CBOE Rule 18.1A provides detailed guidance concerning claims involving TPHs, associated persons, and/or customers that are asserted on or after the Effective Date. First, disputes, claims, or controversies between or among CBOE TPHs and non-CBOE TPHs to resolve TPH-to-TPH, TPH-to-associated person, TPH-to-non-CBOE TPH, associated person-to-associated person, and associated person-to-non-CBOE TPH disputes arising out of or in connection with Exchange business would be arbitrated pursuant to the FINRA Codes of Arbitration. Proposed subparagraph (b) of CBOE Rule 18.1A provides that a dispute, claim, or controversy alleging employment discrimination (including a sexual harassment claim) in violation of a statute, however, may only be arbitrated if the parties have agreed to arbitrate it after the dispute arose.⁶ Any type of dispute, claim, or controversy that is not permitted to be arbitrated under the

⁵ The Exchange notes that there are three cases currently pending.

⁶ The Exchange notes that FINRA rules currently provide that any claim alleging employment discrimination, including any sexual harassment claims, in violation of a statute, is eligible for arbitration pursuant to either a pre-dispute or a post-dispute agreement to arbitrate. In contrast,

FINRA Codes of Arbitration, such as class action claims, would also not be eligible for arbitration. Proposed CBOE Rule 18.1A would also apply to former CBOE TPHs and former associated persons of CBOE TPHs.

Additionally, proposed CBOE Rule 18.1A(d) would explicitly retain the Exchange's enforcement authority related to arbitration. In appropriate cases, arbitrators refer to the Exchange potential violations of the Exchange's Rules or the federal securities laws that come to their attention during and in connection with a proceeding. Proposed CBOE Rule 18.1A would specify that the Exchange would retain the ability to take action based on such referrals that may come from arbitrators in cases being arbitrated at FINRA.

Proposed CBOE Rule 18.1A(e) would also retain the substance of current CBOE Rule 18.37, regarding the obligation to honor arbitration awards. It would provide that any TPH, or associated person of any TPH, that fails to honor an award of arbitrators rendered under proposed CBOE Rule 18.1A would be subject to disciplinary proceedings in accordance with Chapter 17 of the CBOE Rules. Proposed CBOE Rule 18.1A(f) would also specify that the submission of any matter to arbitration as provided for under the Rule would in no way limit or preclude any right, action, or determination by the Exchange that it would otherwise be authorized to adopt, administer, or enforce. Proposed CBOE Rule 18.1A(c) would also provide that the requirements of FINRA Rule 2268 (Requirements When Using Pre-dispute Arbitration Agreements for Customer Accounts) would apply to pre-dispute arbitration agreements between TPHs and their customers.

proposed Rule 18.1A(b) would permit claims to be arbitrated only when the parties have agreed to arbitrate the claim after it has arisen.

Finally, the Exchange proposed adding Interpretation and Policy .04 to existing CBOE Rule 18.1, to clarify that the current CBOE arbitration rules (Rules 18.1 through 18.37), would apply only to arbitrations commenced prior to the Effective Date and would be otherwise of no force or effect. Proposed new Interpretation and Policy .04 would also clarify that all arbitrations filed prior to the Effective Date would, until concluded, continue to be administered by the Exchange.

2. Statutory Basis

The Exchange believes that 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.⁷ Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) 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.⁸ Additionally, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.⁹

In particular, the Exchange believes that the proposed rule change would facilitate the transition of the Exchange's arbitration forum to FINRA's pursuant to the RSA the Exchange

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ Id.

recently entered into with FINRA. Additionally, the Exchange believes that the proposed rule change would streamline the arbitration process and provide for a unified and efficient arbitration forum with one set of arbitration rules and administrative procedures for all cases filed after the Effective Date. The Exchange also believes that the proposal would provide a clear framework to handle arbitrations in a manner that is designed to prevent fraudulent and manipulative acts and practices, and to promote the protection of investors and the public interest. Further, the Exchange believes that the proposed rule change would provide greater harmonization between Exchange Rules and the rules of similar substance and purpose of FINRA, resulting in less burdensome and more efficient regulatory compliance for members of both the Exchange and FINRA (“Dual Members”), removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that the proposed rule change would promote the protection of investors and the public interest by continuing to provide market participants with a simple and inexpensive procedure for resolution of their controversies. Specifically, the Exchange notes that while CBOE would cease to administer an arbitration program, TPHs, associated persons, and their customers would still have an effective forum in which to arbitrate their disputes, claims, or controversies (i.e., TPHs, associated persons, and their customers would still have the availability of an arbitration program; it would just be FINRA’s program in lieu of CBOE’s). The Exchange believes that FINRA maintains a robust dispute resolution system that provides a clear framework to handle arbitrations in a manner that is designed to prevent fraudulent and manipulative acts and practices and promotes the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. CBOE believes that the proposed rule change is not designed to address any competitive issues. Rather, CBOE believes that the proposed rule change is designed to facilitate the transition of the Exchange's arbitration forum to FINRA's pursuant to the RSA and streamline the arbitration process and provide for a unified and efficient arbitration forum with one set of arbitration rules and administrative procedures for all cases filed after the Effective Date. Additionally, CBOE believes that the proposed rule change would provide greater harmonization between the Exchange Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members.

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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 shall institute proceedings under Section 19(b)(2)(B) of the Act¹² 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-2015-037 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-2015-037. 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 at <http://www.sec.gov/rules/sro.shtml>. Copies of the submission, all subsequent amendments, all written statements with respect to the

¹² 15 U.S.C. 78s(b)(2)(B).

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. 20549-1090 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-2015-037 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.¹³

Brent J. Fields
Secretary

¹³ 17 CFR 200.30-3(a)(12).