

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75736; File No. SR-CBOE-2015-045)

August 19, 2015

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as modified by Amendment No. 1, Relating to Rule 6.53C and Complex Orders on the Hybrid System

I. Introduction

On May 12, 2015, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to modify CBOE Rule 6.53C, Complex Orders on the Hybrid System, regarding eligibility for participation in the Complex Order Book (“COB”) and the Complex Order Auction (“COA”). The proposed rule change was published for comment in the Federal Register on May 27, 2015.³ On June 3, 2015, CBOE filed Amendment No.1 to the proposed rule change.⁴ On July 6, 2015, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to August 25, 2015.⁵ The Commission has received no comments on the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75003 (May 20, 2015), 80 FR 30306 (“Notice”).

⁴ Amendment No. 1 to the proposed rule change amended the statutory basis and burden on competition sections regarding distinguishing between Professional and non-Professional orders for purposes of determining eligibility for COA.

⁵ See Securities Exchange Act Release No. 75359 (July 6, 2015), 80 FR 39821 (July 10, 2015).

This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

The Exchange seeks to modify CBOE Rule 6.53C to allow the Exchange to further distinguish between the complex order origin types that are eligible for the COB and COA.⁷ Currently, under CBOE Rule 6.53C, the Exchange may determine whether orders from non-broker dealer public customers, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange are eligible for entry into the COB or COA. Under these current COA and COB eligibility parameters, there is no distinction between professional public customers and non-professional public customers.

The Exchange proposes to modify CBOE Rule 6.53C so that it could determine whether the following two additional types of market participants are eligible for entry into the COB and the COA: (i) non-broker-dealer public customers that are Voluntary Professional Customers or Professional Customers (herein, “Professionals”) and (ii) non-broker-dealer public customers that are not Voluntary Professional Customers or Professional Customers.

CBOE states that it is proposing this change so that it may prevent orders from Professionals from triggering a COA. According to the Exchange, CBOE participants currently may cancel and replace their complex orders as often as they wish without incurring any

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ The COA is a feature within CBOE’s Hybrid System that exposes eligible complex orders for price improvement. In classes where the COA is activated, eligible orders are electronically exposed for an exposure period. At the conclusion of the COA process, the order is then allocated or, to the extent not executed, sent to the COB or routed. See Notice, 80 FR at 15264.

cancellation fees. Each order that meets the eligibility requirements detailed in CBOE Rule 6.53C,⁸ including cancellations and replacements, generates a new COA. The Exchange states that few of the complex orders entered by Professional Customers that trigger a COA actually execute in the auction process.⁹ Accordingly, CBOE believes that allowing COA eligibility to be determined by origin code (e.g., by whether the order comes from a Professional), which permits CBOE to prevent orders from Professionals from triggering a COA, will “eliminate the clutter of unnecessary Professional COA messages, as well as increase the likelihood of executions for public customers.”¹⁰ The Exchange further believes that allowing Professionals to participate in the COA can be detrimental to non-professional public customer order flow.¹¹ The Exchange also believes that “removing unnecessary Professional COA messages may encourage more participants to provide auction responses (ultimately increasing the likelihood of executions for public customers...) because fewer unnecessary COA messages will most likely increase the proportion of responses that lead to an execution.”¹²

⁸ A COA-eligible order is a complex order that, as determined by the Exchange on a class-by-class basis, is eligible for COA considering the order’s marketability (defined as a number of ticks away from the current market), size, complex order type, and complex order origin type. See Rule 6.53C(d)(1). This proposed rule change would change the term “complex order origin type” to “complex order origin code.”

⁹ For example, in Amendment No. 1, the Exchange notes that orders for Professionals made up 52% of COA auctions but resulted in 0.62% of COA executions in the month of February 2015. The Exchange states that this is a representative example of Professional orders participation and execution rates in the COA.

¹⁰ See Notice, 80 FR at 30307.

¹¹ See id.

¹² See Amendment No. 1 at 4.

III. Proceedings to Determine Whether to Approve or Disapprove SR-CBOE-2015-045 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹³ to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and comment on, whether the proposed rule change is consistent with: Section 6(b)(5) of the Act,¹⁵ which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,¹⁶ which requires that the rules of a national securities exchange not impose any burden on competition not necessary or

¹³ 15 U.S.C. 78s(b)(2)(B).

¹⁴ 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Exchange Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See id. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. See id.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(8).

appropriate in furtherance of the purposes of the Act.

The Exchange's proposed rule change would provide the Exchange discretion to determine whether two additional groups of market participants are eligible for entry into the COA and COB: (i) Professionals and (ii) non-broker-dealer public customers that are not Professionals.¹⁷ The Commission believes that the proposal raises important issues that warrant further public comment and Commission consideration regarding whether the proposal would result in unfair discrimination or would impose an unnecessary and or inappropriate burden on competition to the extent the Exchange exercises its proposed discretion and excludes either of the two categories of market participants discussed above from the COA and COB.

In light of these issues and concerns, the Commission believes that questions arise regarding whether the proposal is consistent with the requirements of Sections 6(b)(5) and 6(b)(8) of the Act. As the Commission continues to evaluate the issues presented by the proposal, the Commission solicits comment on whether the proposal is consistent with the Act and whether the Exchange has met its burden in presenting a statutory analysis of how its proposal is consistent with the Act. In particular, the grounds for disapproval under consideration include whether the Exchange's proposal is consistent with Sections 6(b)(5)¹⁸ and 6(b)(8)¹⁹ of the Act.

¹⁷ Under the current Rule, CBOE already may determine that Broker-dealers that are not Market-Makers or specialists on an options exchange and Market-Makers or specialists on an options exchange are not eligible for entry into the COA and COB pursuant to CBOE Rule 6.53C.

¹⁸ 15 U.S.C. 78(f)(b)(5).

¹⁹ 15 U.S.C. 78(f)(b)(8).

In addition, under the Commission’s rules of procedure, a self-regulatory organization that proposes to amend its rules bears the burden of demonstrating that its proposal is consistent with the Act.²⁰ In this regard:

the description of the proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure of the self-regulatory organization to provide the information elicited by Form 19b-4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder that are applicable to the self-regulatory organization.²¹

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8)²² or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,²³ any request for an opportunity to make an oral presentation.²⁴

²⁰ Rule 700(b)(3), 17 CFR 201.700(b)(3).

²¹ Id.

²² 15 U.S.C. 78f(b)(5) and (b)(8).

²³ 17 CFR 240.19b-4.

²⁴ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. In light of the concerns raised by the proposed rule change, as discussed above, the Commission invites additional comment on the proposed rule change as the Commission continues its analysis of whether the proposed rule change is consistent with Section 6(b)(5),²⁵ Section 6(b)(8),²⁶ and all other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission invites comment on the following:

1. Would excluding orders submitted by Professionals from entry into the COA or COB adversely affect the ability of Professionals to execute their orders? Why or why not?
2. Do commenters agree with the Exchange that there are an excessive number of Professional COA messages that adversely affect the likelihood of executions for non-broker-dealer public customers that are not Professionals? Would excluding Professionals orders from the COA increase the likelihood of, or otherwise impact, executions for non-broker-dealer public customers that are not Professionals? If so, how?

Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78f(b)(8).

3. Is the volume of auction messages generated by Professionals disruptive to the auction process? If so, how?
4. Are there other methods that involve less potential for unfair discrimination that could be used to reduce the volume of messages?
5. Do Professionals want their orders to be eligible for entry into the COA or the COB? Why or why not?
6. Although the Exchange states that the proposal is intended to allow the Exchange to prevent Professionals from entry into the COB or COA, the proposed rule change, as drafted, would also allow the Exchange to determine that non-broker-dealer public customers that are not Professionals Customers are not eligible for entry into both the COA and the COB. Do commenters believe that excluding non-broker-dealer public customers that are not Professionals from the COA and COB is consistent with the Act? Is so, why? If not, why not?

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-2015-045 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-2015-045. 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-2015-045 and should be submitted by [insert date 21 days from the date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

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²⁷ 17 CFR 200.30-3(a)(57).