

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78110; File No. SR-CBOE-2016-050]

June 21, 2016

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Order Marking

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 June 16, 2016, 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 seeks to update certain order marking requirements. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

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Chicago Board Options Exchange, Incorporated  
Rules

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

#### Rule 6.9. Solicited Transactions

A Trading Permit Holder or TPH organization representing an order respecting an option traded on the Exchange (an “original order”), including a spread, combination, or straddle order as defined in Rule 6.53, a stock-option order as defined in Rule 1.1(ii), a security future-option order as defined in Rule 1.1(zz), or any other complex order as defined in Rule 6.53C, may solicit a Trading Permit Holder or TPH organization or a non-Trading Permit Holder customer or broker-dealer (the “solicited person”) to transact in-person or by order (a “solicited order”) with the original order. In addition, whenever a floor broker who is aware of, but does not represent, an original order solicits one or more persons or orders in response to an original order, the persons solicited and any resulting orders are solicited persons or solicited orders subject to this Rule. Original orders and solicited orders are subject to the following conditions.

(a) – (e) No change.

(f) All orders initiated as a result of a solicitation must be marked [“SL.”] in a manner and form prescribed by the Exchange and announced via Regulatory Circular. [If the solicited person is on the trading floor and elects to participate by order, the solicited person must retain a copy of the solicited order on the trading floor so long as the order is active.]

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#### Rule 6.53. Certain Types of Orders Defined

One or more of the following order types may be made available on a class-by-class basis. Certain order types may not be made available for all Exchange systems. The classes and/or systems for which the order types shall be available will be as provided in the Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

(a) – (f) No change.

(g) Not Held Order. A not held order is an order marked “not held”, “take time” or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed. An order entrusted to a Floor Broker will be considered a Not Held Order, unless otherwise specified by a Floor Broker’s client or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the order entry firm’s routing instructions. Not Held Orders and/or “held” orders must be marked in a manner and form prescribed by the Exchange and announced via Regulatory Circular.

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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 update order marking requirements applicable to solicited orders under Rule 6.9(f) and Not Held Orders under Rule 6.53(g).

Rule 6.9 governs the procedures and priority applicable to the open outcry execution of an order solicited (a “solicited order”) by a Trading Permit Holder or TPH organization representing an order respecting an option traded on the Exchange (an “original order”).<sup>5</sup> Rule 6.9(f) currently provides that orders initiated as a result of a solicitation must be marked “SL.” The requirement to mark an order “SL” was implemented when paper order tickets were utilized on the floor of the Exchange, and the marking requirement has not been updated since paper order tickets stopped being used. Thus, the Exchange is proposing to update Rule 6.9(f) by proposing that all orders

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<sup>5</sup> Rule 6.9 specifically sets forth rules governing the priority of a solicited order when the terms of the original order were either disclosed to the trading crowd prior to the solicitation (Rule 6.9(a)(b) and (c)) or disclosed to the trading crowd after the solicitation (Rule 6.9(d)); prohibiting trading based on knowledge of an imminent undisclosed solicited transactions (Rule 6.9(e)); and requiring solicited orders be marked as such (Rule 6.9(f)).

initiated as a result of a solicitation must be marked in a manner and form prescribed by the Exchange and announced via Regulatory Circular.<sup>6</sup>

The Exchange, through a third-party vendor, is in the process of updating the Exchange provided Floor Broker Workstation (“FBW2”)<sup>7</sup> and has updated Exchange provided PULSe to enable TPHs to mark solicited orders upon systematization. Additionally, the Exchange is in the process of updating the Public Automatic Routing System (“PAR”) and the Order Management Terminal (“OMT”) to allow orders that are identified as solicited orders to be captured in the electronic audit trail. The Exchange will not implement any solicited order marking requirement changes pursuant to amended Rule 6.9(f) until the enhancements to FBW2, PULSe, PAR, and OMT are complete.

Rule 6.53(g) defines a “Not Held Order” as an order marked "not held", "take time" or which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed.<sup>8</sup> On June 25, 2015, the Securities and Exchange Commission (the “Commission”) approved a rule filing providing that an order entrusted to a Floor Broker is considered a Not Held Order, unless otherwise specified by a Floor Broker's client or the order was received by the Exchange electronically and subsequently routed to a Floor Broker or PAR Official pursuant to the order entry firm's routing instructions.<sup>9</sup>

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<sup>6</sup> The Exchange proposes to remove the requirement that if the solicited person is on the trading floor and elects to participate by order, the solicited person must retain a copy of the solicited order on the trading floor so long as the order is active. The requirement is no longer relevant as orders are captured in the electronic audit trail.

<sup>7</sup> See RG16-052.

<sup>8</sup> A “Not Held” order generally is one where the customer gives the Floor Broker discretion in executing the order, both with respect to the time of execution and the price (though the customer may specify a limit price), and the Floor Broker works the order over a period of time to avoid market impact while seeking best execution of the order.

<sup>9</sup> See Securities Exchange Act Release No. 75299 (June 25, 2015), 80 FR 37700 (July 1,

Although SR-CBOE-2015-047 provides that orders entrusted to Floor Brokers are by default Not Held Orders, the Exchange currently requires Not Held Orders to be proactively marked as Not Held Orders.<sup>10</sup> Orders that are not proactively marked as Not Held Orders are treated as “held” for regulatory purposes. However, the Exchange is in the process of updating PAR and OMT to instead allow certain orders that are not proactively marked as “held” to be considered Not Held Orders, which reflects the fact that orders entrusted to Floor Brokers are by default Not Held Orders. Although it’s reasonably implied from current Rule 6.53(g) that an order that is “held” would need to be marked in a manner to differentiate them from Not Held Orders, the Exchange proposes to amend Rule 6.53(g) to explicitly provide that Not Held Orders and/or “held” orders must be marked in a manner and form prescribed by the Exchange and announced via Regulatory Circular. The Exchange will not modify the current Not Held marking requirements<sup>11</sup> pursuant to amended Rule 6.53(g) until the enhancements to PAR and OMT are complete.

The Exchange will announce the implementation date of this rule filing via Regulatory Circular at least 30 days prior to the implementation date. The implementation date will be within 180 days of the effective date of this filing.

## 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>12</sup> Specifically, the

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2015) (SR-CBOE-2015-047) (Approval Order).

<sup>10</sup> See Regulatory Circular RG15-136.

<sup>11</sup> Id.

<sup>12</sup> 15 U.S.C. 78f(b).

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</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>14</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed amendment to Rule 6.9(f) would promote just and equitable principles of trading by enhancing the Exchange's audit trail. An enhanced audit trail will help the Exchange to regulate these kinds of orders more thoroughly, which should serve to promote just and equitable trading of solicited orders on the Exchange. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>15</sup> which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange. With an enhanced audit trail of solicited orders, the Exchange believes it will be able to more comprehensively monitor the trading of solicited orders on the Exchange.

The proposed addition to Rule 6.53(g) removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects

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<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> Id.

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

investors and the public interest by eliminating any potential confusion as to whether TPHs must proactively mark certain orders as “held” instead of proactively marking certain orders as Not Held Orders, which reflects the fact that orders entrusted to Floor Brokers are by default Not Held 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. In particular, the proposed rule change will not impose any burden on any intramarket competition as it will be applied to similarly situated groups trading on the Exchange equally. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition as the proposed changes merely amends existing TPH obligations related to the marking of solicited orders, “held” orders, and Not Held Orders.

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>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> thereunder. At any time within 60 days of the filing of the

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2016-050 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-2016-050. 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-2016-050 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>18</sup>

Robert W. Errett  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).