

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80123; File No. SR-CBOE-2017-010)

February 28, 2017

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to Unusual Market Conditions

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 February 15, 2017, 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

The Exchange seeks to amend Rule 6.6. The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

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**Chicago Board Options Exchange, Incorporated
Rules**

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Rule 6.6. Unusual Market Conditions

(a) Whenever in the judgment of any two Floor Officials (one of which is an Exchange employee), because of an influx of orders or other unusual conditions or circumstances, such as, for example, extraordinary market volatility, the interest of maintaining a fair and orderly market so requires, those Floor Officials may declare the market in one or more classes of option contracts to be “fast.” It may be in the interest of fair and orderly markets to declare a fast market when one or more of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the following conditions have been met: (i) the previous day's closing price of the S&P 500 Index is more than 2% away from the previous day's opening price; (ii) the front-month E-mini S&P 500 Future (symbol ES/1) is trading more than 20 points above or below the previous day's closing values by 8:00 AM CT; or (iii) the intraday price of the S&P 500 Index moves more than 1% in any one hour interval during regular trading hours.

(b) If a market is declared fast, any two Floor Officials shall have the power to do one or more of the following with respect to the class or classes involved[.]: (i) [Assign one or more classes or series of options traded at the post to Order Book Officials at other posts. (ii) Authorize Order Book Official clerks to execute transactions. (iii)] Direct that one or more trading rotations be employed pursuant to Rules 6.2, 6.2A or 6.2B, as appropriate. [(iv)] (ii) Suspend the firm quote requirement as permitted under Rule 8.51. (iii) Suspend the requirement in Rule 6.24 to systematize a non-electronic order prior to its representation on the trading floor. (iv) [(v) Turn off the Retail Automatic Execution System ("RAES"). (vi)] Take such other actions as are deemed necessary in the interest of maintaining a fair and orderly market.

(c) – (d) No change.

[(e) A Post Director or Order Book Official ("OBO") at a station at a trading post may turn off RAES for a class or classes of options contracts traded at that station for a period of time not to exceed five minutes if, because of an influx of orders or other unusual conditions or circumstances in respect of such options or their underlying securities, the Post Director or OBO determines that such action is appropriate in the interest of maintaining a fair and orderly market. Whenever such action is taken, notice thereof shall immediately be given to two Floor Officials who may continue the deactivation of RAES for more than five minutes or take such actions as they deem necessary pursuant to their authority under this Rule 6.6.]

...Interpretation and Policies:

.01 [The Exchange has implemented an automatic system that monitors news wires for announcements pertaining to stocks underlying stock options at the end of each trading day, commencing shortly before the close of trading in the primary markets for underlying stocks and continuing for so long as stock options continue to be traded, and automatically suspends RAES in a class of stock options whenever the system notes that a news announcement pertaining to the underlying stock has been made. Two Floor Officials are notified promptly by senior help desk personnel each time RAES is automatically suspended. Depending on the Floor Officials' judgment as to the significance of the news announcement and whether its impact has been reflected in current options quotations, and depending on how much time remains before the close of options trading on CBOE, the Floor Officials will consider whether to resume operation of RAES in the affected classes of options. During the time that RAES is suspended, customer orders are routed to terminals on the trading floor for execution. The implementation of this system does not affect the authority of Floor Officials to halt trading under Rule 6.3, or to declare a fast market under Rule 6.6(a) and to take the actions described in Rule 6.6(b).]

In the event that the Exchange suspends the requirement to systematize an order prior to its representation pursuant to paragraph (b) of this Rule 6.6, Trading Permit Holders or TPH

organizations shall follow the procedures as described in paragraph (b) of Rule 6.24. Upon the Floor Officials' determination to reinstate the systematization requirement, Trading Permit Holders shall immediately resume systematizing orders prior to representing them on the trading floor. Additionally, Trading Permit Holders shall exert best efforts to input electronically into the Exchange's systems all relevant order information received during the time period when there was a fast market as soon as possible, and in any event shall input such data electronically into the Exchange's systems not later than close of business on the trade date during which the fast market existed.

.02 The Exchange will announce via Regulatory Circular the form and manner by which Trading Permit Holders must report transactions that occur during a fast market.

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Rule 6.24. Required Order Information

(a) No change.

(b) With respect to orders received during a malfunction or disruption of the Exchange's systems under paragraph (a)(4) above or during a time period when a fast market has been declared under Rule 6.6(a) and the Exchange has suspended the requirement to systematize an order prior to its representation to the trading floor under Rule 6.6(b)(iii):

(1) – (2) No change.

(c) No change.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Rule 6.6 to update the circumstances in which the Exchange may declare a “fast” market; add actions the Exchange may take when a fast market has been declared; and remove outdated provisions.

First, Rule 6.6 currently states that whenever in the judgment of any two Floor Officials, because of an influx of orders or other unusual conditions or circumstances, the interest of maintaining a fair and orderly market so requires, those Floor Officials may declare the market in one or more classes of option contracts to be fast. The Exchange is seeking to further specify that “other unusual conditions or circumstances” can include periods of time during which there is extraordinary market volatility (e.g., large movements in the S&P 500 Index).

As under the current rule, a fast market will only be declared when two Floor Officials believe declaring a market fast is necessary in the interest of maintaining a fair and orderly market. In other words, if two Floor Officials do not believe they need to declare a fast market because of extraordinary market volatility to maintain a fair and orderly market, the Exchange will not declare a fast market. Currently, Floor Officials use their experience and expertise to determine if a market should be declared fast because of an influx of orders or other unusual conditions or circumstances. This proposal is only adding to the rule examples of unusual conditions or circumstances that can be considered when making this determination such as when: the previous day’s closing price of the S&P 500 Index is more than 2% away from the previous day’s opening price; (ii) the front-month E-mini S&P 500 Future (symbol ES/1) is trading more than 20 points above or below the previous

day's closing values by 8:00 AM CT³; or (iii) the intraday price of the S&P 500 Index moves more than 1% in any one hour interval during regular trading hours

The Exchange reviewed approximately eight months of data and observed the previous day's closing price of the S&P 500 Index being more than 2% away from the previous day's opening price on fewer than five days; however, the Exchange believes that when such moves in the S&P 500 Index do occur openings and intraday options trading can be volatile. Additionally, the inclusion of this provision in the rule text will help to serve as notice to market participants as to when the Exchange might call a fast market.

With regards to when the front-month E-mini S&P 500 Future (symbol ES/1) is trading more than 20 points above or below the previous day's closing values by 8:00 AM CT, the Exchange notes that E-mini S&P 500 Futures are often used as a way to measure the state of the overall market in similar manner to which the S&P 500 Index is generally used to measure the state of the overall market. The Exchange believes a 20 point move represents a fairly significant move in the E-mini S&P 500 Futures and could indicate that the opening and intraday options trading will be volatile. Additionally, as previously noted, the Exchange references a 20 point move in the E-mini S&P 500 Futures in other contexts, such as reasonability checks. Furthermore, the inclusion of this provision in the rule text will help to serve as notice to market participants as to when the Exchange might call a fast market.

The Exchange reviewed approximately eight months of data and observed the intraday price of the S&P 500 Index moving more than 1% in any one hour interval during regular trading hours on at least 30 days. Although not an infrequent occurrence, the Exchange believes it is critically important to have an intraday variable that will be used by Floor Officials to guide them as they

³ The Exchange notes that the E-mini S&P 500 Futures are also referenced for purposes of price reasonability checks. See CBOE Regulatory Circular RG13-145.

determine whether there is a fast market. The Exchange notes that this is simply an example of an unusual condition or circumstance that can be considered when making this determination as to whether a fast market should be called. The Exchange notes that a 1% move an hour in the S&P 500 Index is not necessarily cause to call a fast market—just as a 2% move from the previous days open to the previous days close in the S&P 500 Index is not necessarily a cause to call a fast market. However, the Exchange notes that intraday moves of 1% an hour in the S&P 500 Index can cause intraday options trading can be volatile. Floor Officials will use their considerable experience and expertise to make the fast market determination. Additionally, the inclusion of this provision in the rule text will help to serve as notice to market participants as to when the Exchange might call a fast market.

Second, paragraph (b) of Rule 6.6 currently identifies several actions Floor Officials may take when a market is declared fast.⁴ The Exchange is seeking to add that during fast markets Floor Officials will have the power to suspend the requirement in Rule 6.24 to systematize a non-electronic order prior to its representation on the trading floor. There is always risk that market prices will move from the time an order is submitted to a broker to the time the order is executed, potentially causing large losses for customers and market participants. This risk is exacerbated during fast markets as there can be an unusually large number of orders submitted to brokers and market prices can change erratically, extremely quickly, and in enormous swings.

⁴ Rule 6.6(b) currently states that if a market is declared fast, any two Floor Officials shall have the power to do one or more of the following with respect to the class or classes involved: (i) Assign one or more classes or series of options traded at the post to Order Book Officials at other posts. (ii) Authorize Order Book Official clerks to execute transactions. (iii) Direct that one or more trading rotations be employed pursuant to Rules 6.2, 6.2A or 6.2B, as appropriate. (iv) Suspend the firm quote requirement as permitted under Rule 8.51. (v) Turn off the Retail Automatic Execution System (“RAES”). (vi) Take such other actions as are deemed necessary in the interest of maintaining a fair and orderly market.

To illustrate, consider SPX options, which have a multiplier of \$100 and a minimum tick size for simple orders of \$.10 when the bid of the option is more than \$3.00. As each option contract contains 100 options, each tick move is \$1000 (\$100 x \$.10 x 100 options). Considering that most SPX market participants execute orders significantly larger than one contract and that options prices can move significantly in seconds, it is not difficult to imagine a customer losing thousands or even hundreds of thousands of dollars because the customer's broker was required to systematize the customer's order prior to representing the order during a fast market.

The Exchange believes that during these fast markets, which have the potential to cause significant losses for customers and market participants, the entire marketplace would be better served by receiving executions on orders as quickly as possible. Thus, the Exchange proposes, in limited and extraordinary circumstances, to delay (not waive) the requirement to systematize an order.

Rule 6.24 was adopted in its current form by SR-CBOE-2004-077 [sic]. SR-CBOE-2004-77 was submitted to fulfill certain of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against CBOE and other options exchanges (collectively "Options Exchanges").⁵ As part of the Order, the Options Exchanges agreed to, and were ordered to, design and implement the consolidated options audit trail system ("COATS"). The Options Exchanges were required to complete the undertaking in five phases. The final phase of the undertaking to implement COATS required each exchange to "incorporate into its audit trail all non-electronic orders[,] and SR-CBOE-2004-77 addressed the final phase.⁶

⁵ See Securities Exchange Act Release 50996 (January 7, 2005), 70 FR 2436 (January, 13, 2005)("Approval Order")(SR-CBOE-2004-77) and Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File 3—10282 (the "Order").

⁶ See Approval Order at 2437.

The Exchange recognizes the importance of non-electronic order and trade information to the Exchange's audit trail with respect to its regulatory obligations. While the proposed rule change would delay the Exchange's receipt of this information, the Exchange will still require TPHs to submit this information to the Exchange to complete the audit trail. The proposed rule provides that order information for non-electronic orders received while the requirement to systematize prior to representation is suspended under Rule 6.6 will still be incorporated into its audit trail.

Specifically, proposed paragraph (b) of Rule 6.24 states:

With respect to orders received during a malfunction or disruption of the Exchange's systems under paragraph (a)(4) above or during a time period when a fast market has been declared under Rule 6.6(a) and the Exchange has suspended the requirement to systematize an order prior to its representation to the trading floor under Rule 6.6(b)(iii):

(1) Transmitted to the Floor. Each order transmitted to the Exchange must be recorded legibly in a written form that has been approved by the Exchange, and the Trading Permit Holder receiving such order must record the time of its receipt on the floor and legibly record the terms of the order, in written form.

(2) Cancellations and Changes. Each cancellation of, or change to, an order that has been transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the Trading Permit Holder receiving such cancellation or change must record the time of its receipt on the floor.

Thus, information regarding all non-electronic orders will remain a part of the Exchange's audit trail in the same manner as non-electronic orders that cannot be systematized because of a malfunction or disruption of the Exchange' system.⁷ Furthermore, to ensure market participants are aware of the procedures in Rule 6.24(b) that they must follow when the Exchange has suspended the systematization requirement pursuant to Rule 6.6, the Exchange is proposing to reference Rule 6.24(b) in new Interpretation and Policy .02 to Rule 6.6.

⁷ Rule 6.24(a)(4) contemplates a malfunction or disruption of the Exchange's system that prevents a TPH from systematizing an order.

Additionally, the Exchange proposes to amend Rule 6.6.01⁸ to provide that as soon as a fast market ceases, TPHs must immediately resume systematizing orders prior to representing orders and shall use best efforts to, as soon as possible, input electronically into the Exchange's systems all relevant order information received during the time period when there was a fast market but no later than close of business⁹ on the trade date during which the fast market occurred. Specifically, the Exchange is proposing that Rule 6.6.01 state:

In the event that the Exchange suspends the requirement to systematize an order prior to its representation pursuant to paragraph (b) of this Rule 6.6, Trading Permit Holders or TPH organizations shall follow the procedures as described in paragraph (b) of Rule 6.24. Upon the Floor Officials' determination to reinstate the systematization requirement, Trading Permit Holders shall immediately resume systematizing orders prior to representing them on the trading floor. Additionally, Trading Permit Holders shall exert best efforts to input electronically into the Exchange's systems all relevant order information received during the time period when there was a fast market as soon as possible, and in any event shall input such data electronically into the Exchange's systems not later than close of business on the trade date during which the fast market existed.

The Exchange notes that proposed Rule 6.6.01 is patterned off of paragraph (a)(4) of Rule 6.24 regarding the inability of Trading Permit Holders to systematize order information in the event of an Exchange system malfunction.¹⁰

The Exchange notes that the collection and reporting of quotation information to OPRA will not be effected by this rule filing because the Exchange will continue to "collect and promptly transmit to the OPRA System by means of its own facilities bids and offers at stated prices or limits

⁸ Rule 6.6.01 currently relates to the RAES system, which is no longer utilized; thus, Rule 6.6.01 is to be replaced in its entirety.

⁹ "Close of business" refers to the daily trade input deadline specified by the Exchange, which is currently 4:20 p.m. (CT). See CBOE Regulatory Circular RG14-111.

¹⁰ The Commission found Rule 6.24(4) to be a reasonable plan for recording order details in the event of a systems outage or malfunction. See Approval Order at 2438. The Exchange believes proposed Rule 6.6.01 is also a reasonable plan that allows the Exchange to maintain a complete and accurate audit trail during a fast market.

with respect to individual Eligible Securities in which it provides a market,” which, by definition, means the marketplace will continue to have access to the “current state of the market” in all securities traded on the Exchange.¹¹

Additionally, even though in these very limited situations market participants will be able to represent a particular order in the trading crowd prior to systematizing the order, market participants must continue to report the execution of the order within 90 seconds.¹²

Lastly, the proposed rule removes outdated provisions in Rule 6.6 that reference Order Book Officials and the Retail Automatic Execution System (“RAES”), as the Exchange no longer utilizes Order Book Officials or RAES.

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.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ 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

¹¹ See section 5.2(b) of the OPRA Plan (requiring the collection and reporting of quotations to OPRA “sufficient in number and timeliness to reflect the current state of the market in such security”), available at: https://www.opradata.com/pdf/opra_plan.pdf.

¹² See Rule 6.51(a).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed amendment promotes just and equitable principles of trade by giving Floor Officials the ability to declare a fast market when there is extraordinary market volatility that hinders the maintenance of fair and orderly markets. In addition, the proposed amendment protects investors and the public interest by further specifying the actions Floor Officials may take once they declare a fast market. Specifically, the Exchange believes having the ability to suspend the requirement to systematize an order prior to representing the order to the trading floor serves investors and the public interest because it provides floor brokers with the ability to better accommodate customers during times of extreme volatility and high order volume, which can prevent or limit significant customer losses during those times. Furthermore, the Exchange believes the proposed amendment is designed to prevent fraudulent and manipulative acts and practices because the rule is narrowly applied to situations in which two Floor Officials (one of which must be an Exchange employee) believe the maintenance of fair and orderly markets necessitates a fast market declaration. Additionally, the Exchange believes delaying the systemization of an order under these limited and extraordinary circumstances will not significantly impact the integrity of the audit trail. In fact, the Exchange believes that if there is any impact on the audit trail it is outweighed by the benefits to customers and other market participants. Additionally, impacts to individual market surveillances, if any, can be remedied through manual reviews of the required paper order tickets.¹⁶

¹⁵ Id.

¹⁶ See Rule 6.24(b).

Additionally, as proposed in Rule 6.6.01, if the requirement to systematize an order prior to representing the order is suspended, Trading Permit Holders are required to record order information in written form, which provides an adequate audit trail for regulatory purposes.

Additionally, as proposed by Rule 6.6.01 and 6.6.02 [sic], Trading Permit Holders are required to input electronically into the Exchange's systems all relevant order information received during the time period when there was a fast market as soon as possible, and in any event shall input such data electronically into the Exchange's systems not later than close of business on the trade date during which the fast market existed, which will provide an adequate audit trail for regulatory purposes.

The Exchange notes that the collection and reporting of quotation information to OPRA will not be effected by this rule filing because the Exchange will continue to “collect and promptly transmit to the OPRA System by means of its own facilities bids and offers at stated prices or limits with respect to individual Eligible Securities in which it provides a market,” which, by definition, means the marketplace will continue to have access to the “current state of the market” in all securities traded on the Exchange.¹⁷

Finally, the Exchange does not believe the proposal permits unfair discrimination because the benefit of receiving executions in a more timely fashion will likely outweigh any perceived negatives. For example, a broker that does not need to spend crucial time systematizing an order prior to representing an order better serves the client by accessing liquidity as soon as possible.

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. More

¹⁷ See section 5.2(b) of the OPRA Plan (requiring the collection and reporting of quotations to OPRA “sufficient in number and timeliness to reflect the current state of the market in such security”), available at: https://www.opradata.com/pdf/opra_plan.pdf.

specifically, the Exchange does not believe the proposed amendment will impose any burden on intramarket competition because it provides the same relief to all floor brokers in the same manner under the same limited and extraordinary circumstances. In addition, the Exchange does not believe the proposed changes will impose any burden on intermarket competition. The proposed rule change relates solely to information that floor brokers must submit to the Exchange with respect to orders they represent and execute on the Exchange's trading floor. The proposed rule change has little to no effect on market participants because OPRA will be receiving timely quotations during fast markets, which will give all market participants an up-to-date view of the market during a fast market. Any perceived burden on market participants is outweighed by the fact that market participants will be able to receive executions in a timelier manner during times of high market volatility.

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. Please include File Number SR-CBOE-2017-010 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-2017-010. 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, 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-2017-010, 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.¹⁸

Eduardo A. Aleman
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).