

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80760; File No. SR-CBOE-2017-042)

May 24, 2017

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Market-Maker Reports of Executed Orders

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 May 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 and II 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The Exchange proposes to delete and amend outdated rule language contained in Rule 8.9(b) related to Market-Maker reports of executed orders. The text of the proposed rule change is 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

CBOE Rule 8.9(b) currently provides that:

“In a manner prescribed by the Exchange, with respect to transactions to be cleared into all accounts carried for Market-Makers who are the subject of a clearing firm Letter of Guarantee issued pursuant to [CBOE] Rule 8.5, each clearing firm shall, on the business day following order entry date, report to the Exchange every executed order entered by the Market-Maker for the purchase or sale of (i) a security underlying options traded on the Exchange or (ii) a security convertible into or exchangeable for such underlying security or (iii) a security traded on the Exchange (including, with respect to multiply listed securities, orders sent to another exchange), as well as opening and closing positions in all such securities held in each such account. If the clearing firm does not report any executed order, upon the request of the Exchange the Market-Maker who entered the order will be responsible for reporting the order information.”

The Exchange is deleting this rule and replacing it with a rule substantially similar to that of the International Securities Exchange, LLC [sic] (“ISE”); ISE Gemini, LLC [sic] (“ISE Gemini”); BATS Options Market (“BZX”); BOX Options Exchange, LLC (“BOX”); NASDAQ Options Market (“NOM”); and NASDAQ OMX BX, Inc. (“BX”).³

The proposed rule change will result in some specific changes. First of all, Clearing Firms holding accounts for Market-Makers subject to a clearing firm letter of guarantee will no

³ See ISE Rule 807(b); ISE Gemini Rule 807(b); BZX Rule 22.7(b); BOX Rule 8060(b), NOM Rules Chapter 7, Section 7(b); BX Rules Chapter 7, Section 7(b).

longer be required to submit daily reports of orders entered by those Market-Maker accounts. In addition they will not be required to submit daily position reports. Instead, the proposed rule will provide that orders, entered by Market-Makers for the purchase of i) a security underlying options traded on the Exchange, or ii) a security convertible into or exchangeable for such underlying security, as well as opening and closing positions in all such securities shall be provided to the Exchange by Market-Makers upon request in a form prescribed by the Exchange. The obligation to provide order and position reports will be on the individual Market-Makers (as opposed to the clearing firms) and will only be required on an as needed basis. Previously, Market-Makers were responsible for reporting order information, when requested by the Exchange, if the clearing firm did not report on an executed order.

The proposed rule is also eliminating any requirement that either a Market-Maker or clearing firm provide order or position reports for securities traded on the Exchange. The requirement to provide order or position reports for securities traded on the Exchange has been removed completely and this information will not be required even on an as needed basis pursuant to proposed Rule 8.9(b). “Securities traded on the Exchange” was a reference to when non-options transactions were traded on the CBOE. The CBOE deleted its rules related to non-options transactions on the Exchange in 2008.⁴ Accordingly, the requirement to provide order or position reports for securities traded on the Exchange is obsolete.

Finally, the proposed rule outlines the form of the order reports to be provided by Market-Makers upon request. The proposed rule will require that the reports pertaining to orders must include the terms of each order, identification of the brokerage firms through which the

⁴ See Securities Exchange Act Release No. 58771 (October 10, 2008), 73 FR 62350 (October 20, 2008) (SR-CBOE-2008-101).

orders were entered, the times of entry or cancellation, the times reports of execution were received and, if all or part of the order was executed, the quantity and execution price.

The Exchange believes current Rule 8.9(b) is outdated and operationally obsolete. The Exchange does not currently use the daily order and position reports from clearing firms. The daily order and position reports from clearing firms are no longer needed to conduct any routine regulatory surveillances or examinations or fulfill any other of the Exchange's regulatory obligations. Any regulatory surveillance or examination that previously used the daily order and position reports can be operated without the information due to the development of effective workarounds. As such, the rule, as currently written, presents an undue burden on clearing firms and Market-Makers.

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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

is consistent with the Section 6(b)(5)⁷ 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 rule change removes impediments and perfects the mechanism of a free and open market by deleting obsolete rule requirements related to daily order and position reports provided to the Exchange by clearing firms. The daily order and position reports are no longer needed in the normal course of the Exchange fulfilling its regulatory responsibilities. In the event order or position information related to Market-Maker activity in securities underlying options traded on the exchange is needed, the proposed rule provides that Market-Makers must provide those reports to the Exchange upon request. The proposed rule also perfects the mechanism of a free and open market by listing information that should be contained in the reports that are to be provided upon request of the Exchange. In addition, the proposed rule change is substantially similar to rules of other options exchanges.⁸

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule raises neither intermarket nor intermarket competition issues, as it relates to the submission of reports to the Exchange for regulatory purposes. The proposed rule deletes obsolete rule language. The daily order and position reports from clearing firms are no longer needed to conduct any routine regulatory surveillances or examinations or fulfill any other of the Exchange's regulatory obligations. The proposed rule change removes this undue burden on clearing firms and Market-

⁷ Id.

⁸ See supra note 1 [sic].

Makers and replaces it with a requirement substantially similar to that of other options exchanges.⁹
The proposed requirement will apply to equally to all Market-Makers on the Exchange.

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: (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. 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.

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:

⁹ Id.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of 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.

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-2017-042 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-2017-042. 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-2017-042 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.¹²

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Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).