

March 18, 2015.<sup>5</sup> On February 20, 2015, the Commission issued an order instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposal. This order was published for comment in the **Federal Register** on February 26, 2015.<sup>7</sup> The Commission received a further three comments regarding the proceedings or in response to Amendment No. 1,<sup>8</sup> to which FINRA responded via letter on May 5, 2015.<sup>9</sup>

Section 19(b)(2) of the Act<sup>10</sup> provides that, after initiating approval or disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposal was published for comment in the **Federal Register** on November 24, 2014.<sup>11</sup> The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is May 23, 2015 and the 240th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is July 22, 2015.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or

disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, including the matters raised in the comment letters to the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> designates July 22, 2015 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-FINRA-2014-047).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75003; File No. SR-CBOE-2015-045]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Rule 6.53C and Complex Orders on the Hybrid System

May 20, 2015.

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 May 12, 2015, 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 proposes to modify Rule 6.53C, Complex Orders on the Hybrid System, to give the Exchange the flexibility to distinguish between Professional and non-Professional orders for the purposes of determining eligibility for COA. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

\* \* \* \* \*

#### Chicago Board Options Exchange, Incorporated

##### Rules

\* \* \* \* \*

#### Rule 6.53C. Complex Orders on the Hybrid System

(a)-(b) No change.

(c) Complex Order Book

(i) Routing of Complex orders: The Exchange will determine which classes and which complex order origin [types] *codes* (i.e., non-broker-dealer public customers *that are not Voluntary Professional Customers or Professional Customers, non-broker-dealer public customers that are Voluntary Professional Customers or Professional 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 and whether such complex orders can route directly to the COB and/or from PAR to the COB. Complex orders not eligible to route to COB (either directly or from PAR to COB) will route to PAR or at the order entry firm's discretion to the order entry firm's booth.

(ii)-(iv) No change.

(d) Process for Complex Order RFR Auction: Prior to routing to the COB or once on PAR, eligible complex orders may be subject to an automated request for responses ("RFR") auction process.

(i) For purposes of paragraph (d):

(1) No Change.

(2) A "COA-eligible order" means a complex order that, as determined by the Exchange on a class-by-class basis, is eligible for a COA considering the order's marketability (defined as a number of ticks away from the current market), size, complex order type (as defined in paragraphs (a) and (b) above) and complex order origin [types] *codes* (as defined in subparagraph (c)(i) above). Complex orders processed through a COA may be executed without consideration to prices of the same complex orders that might be available on other exchanges.

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

<sup>5</sup> Exchange Act Release No. 74488 (Mar. 12, 2015); 80 FR 14174 (Mar. 18, 2015).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> Exchange Act Release No. 74339 (Feb. 20, 2015); 80 FR 10528 (Feb. 26, 2015). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 15A(b)(9) of the Act, which requires that FINRA's rules be designed to, among other things, promote just and equitable principles of trade, 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 Section 15D of the Act, which requires rules reasonably designed to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances. *See id.*

<sup>8</sup> Letter from Egidio Mogavero, Managing Director and Chief Compliance Officer, JMP Securities, dated Mar. 19, 2015, Letter from Stephanie R. Nicholas, WilmerHale, dated Apr. 6, 2015, and Letter from William Beatty, President and Washington (State) Securities Administrator, North American Securities Administrators Association, Inc., dated Apr. 17, 2015.

<sup>9</sup> Letter from Philip Shaikun, Vice President and Associate General Counsel, FINRA, dated May 5, 2015.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> *See supra* note 3 and accompanying text.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(57).

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

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

## 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 seeks to modify Rule 6.53C to allow the Exchange to further distinguish between the complex order origin types<sup>3</sup> that are eligible for the Complex Order Book ("COB") and the Complex Order Auction ("COA").

#### Background

Under CBOE rules, a "public customer" or "customer" is a person or entity that is neither a member nor a broker/dealer. The terms are used in specific CBOE rules that provide certain marketplace advantages to public customer orders over non-customer orders (e.g., orders for the account of members or broker/dealers). In particular, under CBOE rules, subject to certain exceptions, (i) public customer orders are given priority over non-customer orders and Market-Maker quotes at the same price,<sup>4</sup> and (ii) Trading Permit Holders are generally not charged a transaction fee for the execution of public customer orders. The purpose of providing these marketplace advantages to public customer orders is to attract retail investor order flow to the Exchange by leveling the playing field for retail

<sup>3</sup> The Exchange notes that many CBOE rules use origin "code" in the same manner as origin "type" is used in Rule 6.53C(c). For example, Rules 6.2B(a)(i), 6.13(b)(i), 6.13A(a), 6.14A(a), 6.74A.07, 6.74B.01, 24B.5A, and 24B.5B use origin "code" to distinguish between public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders. This proposal seeks to, among other things, amend Rule 6.53C(c) to use origin "code" instead of "type" in order to make the rules more consistent.

<sup>4</sup> See, e.g., CBOE Rules 6.45, *Priority of Bids and Offers—Allocation of Trades*, 6.45A, *Priority and Allocation of Equity Options Trades on the CBOE Hybrid System*, and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*.

investors over market professionals<sup>5</sup> and providing competitive pricing.

To ensure that the above mentioned marketplace advantages for public customers are protected, the Exchange adopted the terms "Voluntary Professional" and "Professional" (hereinafter "Professional(s)") in Rule 1.1(fff) and (ggg) respectively, which provide that Professionals are not brokers or dealers but will be treated in the same manner as brokers or dealers for purposes of many CBOE rules (including, e.g., Rules 6.53C(c)(ii) and 6.53C(d)(v)).<sup>6</sup>

COA is a feature within CBOE's Hybrid System that exposes eligible complex orders for price improvement. In classes where COA is activated, eligible orders are electronically exposed for an exposure period. During the applicable exposure period, the orders that are subject to exposure are eligible to receive a better price. At the conclusion of the COA process, as applicable, the order is then allocated or, to the extent not executed, booked or routed as described in the relevant rules.

A "COA-eligible order" means 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 (as defined in paragraphs (a) and (b) of Rule 6.53C and complex order origin types (as defined in subparagraph (c)(i) of Rule 6.53C).<sup>7</sup> Subparagraph (c)(i) of Rule 6.53C indicates that complex order origin type means orders for 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.<sup>8</sup> Non-broker-dealer public customers include Professionals and non-professional customers. Under the current COA eligibility parameters,

<sup>5</sup> Market professionals have access to sophisticated trading systems that contain functionality not available to retail customers, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously, and order and risk management tools.

<sup>6</sup> See Securities Exchange Act Release No. 34-61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (SR-CBOE-2009-078) (order approving proposed rule change as relating to professional orders). A Professional is a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Voluntary Professional is any person or entity that is not a broker or dealer that elects to be treated as a Professional.

<sup>7</sup> See Rule 6.53C(d)(i)(2) (indicating that complex order origin type is defined in Rule 6.53C(c)(i)).

<sup>8</sup> See Rule 6.53C(c)(i).

there is no distinction between Professionals and non-professional public customers.

#### Proposal

Currently, Professionals are not given priority, but are allowed to cancel and replace their orders as often as they wish without incurring any cancellation fees. The issue with this current structure is that each of the orders as well as the cancellations and replacements generate a new COA. Yet, only a few of these orders actually execute in the auction process. Rather, the result is an excess of auction messages that are generated unnecessarily. The Exchange notes that a disproportionate number of the COA messages in comparison to COA executions result from Professionals. Therefore, in order to eliminate the clutter of unnecessary Professional COA messages, as well as to increase the likelihood of executions for public customers, the Exchange is seeking the flexibility to disable COA functionality for Professionals.

In order to gain the flexibility to disable COA functionality for Professionals, the Exchange seeks to amend Rule 6.53C(c)(i), which defines the complex order origin types (hereinafter origin "code" as the Exchange is also proposing to change origin "type" to origin "code" in order to adopt the manner in which origin "code" is used in several other Exchange rules)<sup>9</sup> that are eligible for COA. As amended, the definition of a complex order origin code will be defined as either: Non-broker-dealer public customers that are not Voluntary Professional Customers or Professional Customers; non-broker-dealer public customers that are Voluntary Professional Customers or Professional Customers; broker-dealers that are not Market-Makers or specialists on an options exchange; and/or Market-Makers or specialists on an options exchange. The proposal would not, however, permit the Exchange to discriminate among individual market participants of the same origin code (e.g., permit certain Professional orders to the exclusion of orders from a different Professional).

The Exchange is proposing these changes because the Exchange believes allowing Professionals to participate in COA can be detrimental to non-professional public customer order flow and cause a large amount of auctions to be processed without executions arising from those auctions. This is because Professionals frequently cancel and

<sup>9</sup> See *supra*, note 1 [sic].

replace their orders and prices as a means of attempting to quote with their orders. The Exchange believes that Professionals should not be a priority over non-professional public customer order flow, which is why, the Exchange notes, there are separate CBOE rules for Professionals in the first place.<sup>10</sup>

The proposed change modifies the definition of a "COA-eligible order" to give the Exchange the flexibility to distinguish between complex orders from Professionals and complex orders from non-professional public customer order flow. Any changes to the COA-eligible order parameters would be announced via Regulatory Circular.

## 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>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</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>13</sup> 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 change is in accordance with the Act as it is merely intended to provide the Exchange the flexibility to distinguish between Professionals and non-professional public customer orders for the purposes of COA, which is intended to benefit non-professional public customers by providing a more efficient COA for eligible complex 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. Although the Exchange recognizes that the proposal will allow the Exchange to exclude Professionals from COA, the current rules already allow the Exchange to differentiate between order origin types (*i.e.*, non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialist on an options exchange). The Exchange believes any perceived burden on Professionals would be outweighed by the potential benefits to public customers. In addition, the proposal would not permit the Exchange to discriminate among individual market participants of the same origin code (*e.g.*, the proposal would not allow the Exchange to permit certain Professional orders to the exclusion of orders from a different Professional).<sup>14</sup> The Exchange does not believe the proposed changes will have any burden on intermarket competition.

### 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 email to [rule-comments@sec.gov](mailto: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 email 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 Web site (<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 Web site 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 such filing also will be available for inspection and copying at the principal offices 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 on or before June 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services,

<sup>10</sup> See Rules 1.1 (fff) and (ggg).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> *Id.*

<sup>14</sup> See *supra*, note 5.

<sup>15</sup> 17 CFR 200.30-3(a)(12).