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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74519; File No. SR-CBOE-2015-026)

March 17, 2015

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Rules 6.74A and 6.74B

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 March 6, 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 seeks to amend CBOE Rules 6.74A and 6.74B. 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

Rule 6.74A. Automated Improvement Mechanism ("AIM")

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. . . Interpretations and Policies:

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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.04 [Any solicited orders submitted by the Initiating Trading Permit Holder to trade against the Agency Order may not be for the account of a Market-Maker assigned to the option class.] A Market-Maker submitting a solicited order to execute against a particular Agency Order may not modify its pre-programmed response to Request for Responses based on information regarding the particular Agency Order or solicited order.

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Rule 6.74B. Solicitation Auction Mechanism

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. . . Interpretations and Policies:

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.03 Under Rule 6.74B, Trading Permit Holders may enter contra orders that are solicited. The Auction provides a facility for Trading Permit Holders that locate liquidity for their customer orders. Trading Permit Holders may not use the Auction to circumvent Rules 6.45A.01, 6.45B.01 or 6.74A limiting principal transactions. This may include, but is not limited to, Trading Permit Holders entering contra orders that are solicited from (a) affiliated broker-dealers, or (b) broker-dealers with which the Trading Permit Holder has an arrangement that allows the Trading Permit Holder to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, [solicited contra orders entered by Trading Permit Holders to trade against Agency Orders may not be for the account of a CBOE Market-Maker assigned to the options class.] a Market-Maker submitting a solicited order to execute against a particular Agency Order may not modify its pre-programmed

response to Request for Responses based on information regarding the particular Agency Order or solicited order.

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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 amend its rules regarding the ability of a Market-Maker assigned to an options class to be solicited as the contra party to an Agency Order in that class on the Exchange's Automated Improvement Mechanism ("AIM") and Solicitation Auction Mechanism[3] ("SAM" and, together with AIM, the "Auctions"). Currently, Interpretation and Policy .04 to Rule 6.74A (AIM) states that "Any solicited orders submitted by the Initiating Trading Permit Holder to trade against the Agency Order may not be for the account of a

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[3] The Exchange notes that the SAM Auction is currently deactivated. See CBOE Regulatory Circular RG14-076 – Deactivation of the Solicitation Auction Mechanism (SAM) (May 16, 2014).

Market-Maker assigned to the option class." Similarly, the last sentence of Interpretation and Policy .03 to Rule 6.74B (SAM) states that "Additionally, solicited contra orders entered by Trading Permit Holders to trade against Agency Orders may not be for the account of a CBOE Market-Maker assigned to the options class." This rule language acts to limit a Trading Permit Holder ("TPH") initiating Auctions from access to liquidity that should otherwise be available.

On the Exchange, there are a number of large, global Market-Making firms that have market-making and proprietary operations. In addition, there are small market-making firms that only have market-making operations. The current rule neither prohibits the proprietary arm of a global firm from submitting a contra order in these Auctions nor prohibits the global firm's market-making operation from responding to an Auction in which the proprietary desk has submitted a contra order. More importantly, if two Market-Makers are nominees of the same firm – one appointed to a class on CBOE and the other appointed in the same class on another exchange (PHLX for example) – the current rule allows the PHLX Market-Maker to be solicited to participate on an AIM order and the CBOE Market-Maker to respond to the AIM auction. The rule does, however, effectively prohibit the small market-making firms from providing liquidity in the form of contra orders. In preventing a Market-Maker assigned to an options class from being solicited by TPHs to trade against Agency Orders in that class, the small Market-Making firms are effectively prohibited from being solicited by TPHs to trade against nearly all Agency Orders. Because a TPH initiating an auction using AIM or SAM can thusly not solicit contra orders from these Market-Making firms, the TPH is unable to access the greater liquidity that these firms can provide. The Market-Makers, TPHs, and customers are harmed by this rule

language, and the Exchange therefore proposes to delete it.[4] The Exchange believes this is a reasonable modification designed to provide additional flexibility for the Exchange's TPHs to obtain executions on behalf of their customers and to provide CBOE Market-Makers assigned to a given option class with the same opportunity as other solicited parties to participate in the auction process through means of solicited orders submitted by the Initiating TPH. Absent this rule change, CBOE Market-Makers assigned to a given option class are not able to achieve solicited contra order priority status when trading against Agency Orders executed through AIM/SAM while all other parties solicited by the Initiating TPH may have such priority status. Additionally, the Exchange does not believe the rule change will deplete the liquidity available through Auctions; rather, the Exchange believes that by allowing more individuals to participate in the Auction process liquidity will increase.

It is important to note that the rule language that the Exchange proposes to delete applies only to AIM and SAM transactions. As such, a Market-Maker assigned to an options class can currently be solicited to trade against an Agency Order in that class for non-AIM/SAM transactions. Therefore, because Market-Makers only face this prohibition for AIM and SAM transactions, the rules for whether a Market-Maker assigned to an options class can currently be solicited to trade against an Agency Order in that class differ depending on the execution mechanism. The proposed change would eliminate this difference.

In addition, the Boston Options Exchange LLC ("BOX") rules include a "Directed Order" process that is functionally equivalent to the solicitation of orders, and also does not

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[4] The Exchange proposes to delete all of the language currently in Interpretation and Policy .04 to Rule 6.74A and replace it with the word "Reserved." The Exchange also proposes to delete the last sentence of Interpretation and Policy .03 to Rule 6.74B, which states that "Additionally, solicited contra orders entered by Trading Permit Holders to trade against Agency Orders may not be for the account of a CBOE Market-Maker assigned to the options class."

prevent Market-Makers from being solicited to trade against an Agency Order in a class in which the Market-Maker is appointed.[5] As such, the Exchange merely proposes to put Market-Makers at CBOE on a similar competitive footing vis-à-vis the directed orders on BOX.

Furthermore, the Exchange does not believe there is a meaningful regulatory purpose behind the prohibition against Market-Makers being solicited to trade against an Agency Order in a class in which the Market-Maker is appointed because for the firms with appointments on multiple exchanges, the solicited order can simply come from a Market-Maker on a different exchange. More importantly, a Market-Maker that is solicited to trade against an Agency Order in a class in which the Market-Maker is appointed would still be required to abide by Exchange Rules 4.1 (Just and Equitable Principles of Trade), 4.18 (Prevention of the Misuse of Material, Nonpublic Information), and 6.9 (Solicited Transactions) (as well as all other Exchange rules, of course). As such, a Market-Maker would still be prohibited from, for example, learning (via solicitation) that a large order is being sent to the Exchange and therefore widening its quotes. Moreover, because upon entry, an AIM/SAM order is "stopped" for its full quantity at the contra order's price, if a Market-Maker were to widen his quotes, it would not impact the price of the trade. Also, because many classes on the Exchange have a number of Market-Makers appointed, the widening of quotes by one Market-Maker would likely have limited impact on the NBBO (and indeed, it is possible that the solicited Market-Maker that is widening quotes would not be on the NBBO in the first place). Regardless, the Exchange notes that it does not believe the changes contemplated in this filing will have an adverse effect on Market-Maker quoting because the Exchange believes Market-Makers will continue to seek access to order flow that

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[5] See BOX Options Exchange LLC Rule 7150 – Price Improvement Period ("PIP Auction"). The PIP Auction's Directed Order process allows broker-dealers to route orders to BOX Market-Makers for possible PIP Auction execution. The Market-Maker that receives the Directed Order has three seconds to initiate a PIP Auction or decline.

comes into the Exchange outside of the auction process. In order to access that order flow, Market-Makers will need to continue to quote aggressively.[6] The same is true for Auctions in that the solicited Market-Maker will still need to price aggressively in order to trade with an Agency Order because Auctions are competitive with other Market-Makers actively responding.

The Exchange is also proposing to add language that explicitly states that "a Market-Maker submitting a solicited order to execute against a particular Agency Order may not modify its pre-programmed response to Request for Responses based on information regarding the particular Agency Order or solicited order." This language prohibits a Market-Maker from using any information regarding a particular Agency Order or the Market-Maker's solicited order for purposes of modifying the Market-Maker's Request for Responses. However, this language also recognizes that a Market-Maker's quotes may change for many reasons other than an Agency order or the Market-Maker's solicited order (e.g., a non-exclusive list of reasons that a Market-Maker may choose to adjust the size and/or price of quotes, irrespective of an Agency Order or a Market-Maker's solicited order, is a change in the price of the underlying, the Market-Maker's inventory, or interest rates) and those unrelated changes are not prohibited. Furthermore, this language is not intended to prohibit a Market-Maker from providing multiple responses to Request for Responses. Finally, the CBOE Department of Market Regulation already surveils for market participants seeking to take advantage of non-public information by attempting to terminate Auctions early in an effort to limit the number of Auction Reponses in order to ensure a larger allocation amount.

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[6] The Exchange notes that Market-Makers that make markets on multiple exchanges will also have to continue to quote aggressively to access order flow on those other exchanges.

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.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] 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)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change will provide TPHs initiating auctions via AIM and SAM with the ability to access more liquidity by allowing them to solicit Market-Makers assigned to the relevant options class. This will also let Market-Makers assigned to a class benefit from being able to be solicited for trades in that class. As such, the proposed rule change both provides greater access to liquidity and increases the market participants that can participate in a trade (thereby preventing discrimination against Market-Makers assigned to a class). In these ways, the proposed change removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange believes that the

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] Id.

proposed change is reasonable and should promote price competition by providing CBOE Market-Makers with a more reasonable opportunity to compete for proposed crosses along with other market participants. By providing CBOE Market-Makers with the opportunity to be solicited on AIM/SAM Agency Orders in classes in which the Market-Makers are appointed, the proposed change prevents discrimination by providing such Market-Makers with the same opportunity to participate in the transaction (via solicitation) with which other market participants are provided. Furthermore, the Exchange does not believe the proposed rule change will alter Market-Maker incentives to respond to AIM/SAM Auctions. Market-Makers responding to Auctions are seeking to execute as many contracts as possible with the Agency order. The best way to accomplish that goal – currently and after the proposed rule change – is to aggressively respond to Auctions, regardless of who else may be responding or whether the contra-order is a solicited Market-Maker. An Auction with a solicited Market-Maker as contra should have no bearing on whether a competitive and interested responder will respond, nor should it have any bearing on which price that interested Market-Maker would place on his response. In addition, the Exchange does not believe this proposal will have an adverse effect on quoting because, as previously noted, in order to execute against order flow outside of Auctions or on other exchanges Market-Makers will have to continue to quote aggressively.

The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and a national market system, and prevents unfair discrimination, because a Market-Maker assigned to an options class can currently be solicited to trade against an Agency Order in that class for non-AIM/SAM transactions. Therefore, because Market-Makers only currently face this prohibition for AIM and SAM transactions, the rules for whether a Market-Maker assigned to an options class can currently be solicited to trade against an Agency Order in

that class differ depending on the execution mechanism. The proposed change would eliminate this difference.

The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and a national market system, and prevents unfair discrimination, because BOX rules include a "Directed Order" process that allows for the solicitation of orders and does not include a prohibition that prevents Market-Makers from being solicited to trade against an Agency Order in a class in which the Market-Maker is appointed. As such, the Exchange merely proposes to put Market-Makers at CBOE on a similar competitive footing vis-à-vis these solicited orders.

The Exchange notes that the proposed rule change would not impact a Market-Maker's requirements to abide by Exchange Rules 4.1 (Just and Equitable Principles of Trade), 4.18 (Prevention of the Misuse of Material, Nonpublic Information), and 6.9 (Solicited Transactions). As such, a Market-Maker would still be prohibited from, for example, learning (via solicitation) that a large order is being sent to the Exchange and therefore widening its quotes. Indeed, while this could theoretically occur regarding non-AIM/SAM solicitation orders, the Exchange currently prohibits this activity. Moreover, because upon entry, an AIM/SAM order is "stopped" for its full quantity at the contra order's price, if a Market-Maker were to widen his quotes, it would not impact the price of the trade. Also, because many classes on the Exchange have a number of Market-Makers appointed, the widening of quotes by one Market-Maker would likely have limited impact on the NBBO (and indeed, it is possible that the solicited Market-Maker that is widening quotes would not on the NBBO in the first place). As previously noted, however, the Exchange does not believe the changes in this proposal will adversely effect Market-Maker quoting.

Finally, in addition to the above general prohibitions, the proposed prohibition against a Market-Maker modifying its pre-programmed responses to Request for Responses based on information regarding a particular Agency Order or solicited order serves to protect investors and the public interest.

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.

CBOE does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it actually provides the opportunity for a market participant to be solicited on an order when such market participant currently does not have that opportunity (the Market-Maker assigned to that option class). Furthermore, the Exchange does not believe soliciting Market-Makers will negatively impact auction responses. As noted above, the Exchange believes that an Auction with a solicited Market-Maker as contra should have no bearing on whether a competitive and interested responder will respond, nor should it have any bearing on which price that interested Market-Maker would place on his response. The Exchange also believes that exposure to an electronic auction following a solicitation encourages competition; thus, expanding the pool of available solicited parties prior to the initiation of an Auction further exposes orders to competitive Auctions and results in a higher level of potential execution quality for customers.

CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to trading on CBOE. However, the opportunity for

a Market-Maker to be solicited on an order in a class to which he is assigned may make CBOE a more attractive marketplace by giving more trading opportunities to Market-Makers as well as providing greater volume and liquidity, thereby enhancing competition. As such, to the extent that the proposed change makes CBOE a more attractive marketplace to market participants on other exchanges, such market participants may elect to become CBOE market participants.

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-2015-026 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-2015-026. 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 such 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-2015-026, 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.[10]

Jill M. Peterson
Assistant Secretary

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[10] 17 CFR 200.30-3(a)(12).