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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-74969; File No. SR-CBOE-2015-042]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Limitation of Liability
May 14, 2015.

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 5, 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 and II 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[3] and Rule 19b-4(f)(6) thereunder.[4] 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule 6.7 governing Exchange liability and payments to Trading Permit Holders in connection with certain types of losses that Trading Permit Holders may allege arose out of business conducted on or through the Exchange or in connection with the use of the Exchange's facilities. The Exchange also proposes conforming changes to Rules 2.24 and 6.7A, and the elimination of Rule 7.11. The text of the proposed rule change is available on

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

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(iii).

4 17 CFR 240.19b-4(f)(6).

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

CBOE proposes to amend Rule 6.7 to eliminate any implication of liability with respect to the Exchange and its subsidiaries or affiliates, or any of their directors, officers, committee members, other officials, employees, contractors, or agents, (including the Exchange, collectively, "Covered Persons") for losses arising out of the use or enjoyment of Exchange facilities. The proposed rule change is consistent with and supplements existing law, and would ensure that self-regulatory organizations ("SROs") can operate within the sphere of their regulatory duties without fear of endless, costly litigation and potential catastrophic loss.[5] As

[5] Courts have recognized the importance of protecting exchanges from such loss in deciding that SROs must be absolutely immune from civil actions for losses arising out of the SRO function. See Dexter v. Depository Trust & Clearing Corp., 406 F. Supp. 2d 260, 263 (S.D.N.Y. 2005) (absolute immunity possessed by SROs "is an integral part of the American system of self-regulation"), aff'd 219 F. App'x 91 (2d Cir. 2007). Without such protection, an SRO's "exercise of its quasi-governmental functions would be unduly hampered by disruptive and recriminatory lawsuits." D'Alessio v. NYSE, 258 F.3d 93, 105 (2d Cir. 2001). It is critical that SROs, which stand in the shoes of the SEC in performing their quasi-governmental regulatory function, be free from "the fear of

discussed below, the proposed rule change is also consistent with the rules of other exchanges limiting exchange liability (see, e.g., EDGA Exchange, Inc. ("EDGA") Rule 11.14, BOX Options Exchange, LLC ("BOX") Rule 7230, International Securities Exchange, LLC ("ISE") Rule 705, and New York Stock Exchange LLC ("NYSE") Rule 18).

Under CBOE's proposal, although the Exchange would not be liable for losses, it would have the discretion to compensate Trading Permit Holders for losses alleged to have resulted from the Exchange's failure to correctly process an order or quote due to the acts or omissions of the Exchange or due to the failure of its systems or facilities (each, a "Loss Event"), up to specified limits. The proposed rule change would also establish timeframes within which Trading Permit Holders would be required to bring requests for compensation (and provide supporting documentation), provide factors the Exchange may consider in determining whether to provide compensation in response to such requests, and establish that the Exchange's determinations on compensation are final and not appealable. The proposed rule change would also provide that claims arising under a previous version of Rule 6.7 for losses occurring more than one year prior July 1, 2015 (the "Effective Date") would not be considered valid, and that claims for any losses occurring prior to the Effective Date must be brought within one month of the Effective Date to be considered valid. Specific changes to Exchange Rules are discussed below.[6]

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burdensome damage suits that would inhibit the exercise of their independent judgment." Dexter, 406 F.Supp. 2d at 263.

6 The Exchange notes that Rule 6.7 is cross-referenced in several places throughout the Exchange Rules including, for example, in Rules 20.5, Limitation of Liability of Exchange and of Reporting Authority, 22.5, Limitation of Liability of Exchange and of Reporting Authority, and 50.6, Liability and Legal Proceedings, as well as Appendix A of Chapters XLVII – XLIX and Appendix A of Chapters L – LIV, and generally as part of the Chapter VI cross-references contained in the Introductions to Chapters XX – XXIX. The Exchange also notes that, in accordance with Rule 50.6, the provisions of Rules 2.24, 6.7, and 6.7A

Proposed Amendment to Rule Title

The proposed rule change would change the title of Rule 6.7 from "Exchange Liability" to "Exchange Liability Disclaimers and Limitations." The proposed amendment to the Rule title would clarify that the Rule does not impose liability on the Exchange, but rather disclaims Exchange liability for any losses that arise out of the use or enjoyment of the facilities afforded by the Exchange, any interruption in or failure or unavailability of any such facilities, or any action taken or omitted to be taken in respect to the business of the Exchange, the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities (the "General Disclaimer").[7]

Proposed Amendments to Scope of General Disclaimer

Proposed amendments to Rule 6.7(a) would clarify that "contractors" are included within the term "Covered Persons," and are therefore included within the General Disclaimer. This proposed change is needed because the Exchange at times contracts with outside firms to provide products and services to the Exchange for use by Trading Permit Holders in connection with regulated business conducted on or through the Exchange and that arise out of the use or enjoyment of the facilities afforded by the Exchange and/or the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities. The Exchange notes that this proposed rule change is consistent with the exclusion from liability for contractors found in EDGA Rule 11.14, BOX Rule 7230 and ISE Rule 705. Proposed amendments to Rule

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apply to the CBOE Stock Exchange, LLC ("CBSX," CBOE's stock execution facility) to the same extent that they apply to CBOE and references in those rules to the Exchange are also deemed to be references to CBSX.

7 Cross-references to Rule 6.7 contained in Appendix A of Chapters XLVII – XLIX and Appendix A of Chapters L – LIV are also proposed to be updated to reflect the new title. In addition Appendix A of Chapters L – LIV is proposed to be updated to delete an unnecessary reference to Rule 24.4 and to include a cross-reference to Rule 50.6.

6.7(a) would also clarify that "other officials" of the Exchange or "any subsidiaries or affiliates of the Exchange" are included within the term "Covered Persons," and are therefore included within the General Disclaimer. We note that this proposed rule change to include other officials and subsidiaries is consistent with the existing provisions of Rule 6.7A.[8] The term "Covered Persons" would also include such subsidiaries' and affiliates' directors, officers, committee members, other officials, employees, contractors, or agents.

The proposed rule change would also clarify that implicit in the General Disclaimer is the Exchange's disclaimer of any warranties, express or implied, with respect to the use or enjoyment of facilities afforded by the Exchange, including without limitation, of any data provided by the Exchange. The current language of the rule states that the Exchange does not warrant "the use of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to reports of transactions in or quotations for securities traded on the Exchange or underlying securities, or reports of interest rate measures or index values or related data." Under the proposed rule change, the Exchange would make explicit that the General Disclaimer is intended to contain within it a disclaimer of any warranties as to the use or enjoyment of the facilities offered by the Exchange. The proposed rule change would thereby clarify that such use or enjoyment of Exchange facilities by Trading Permit Holders is provided "as is," without specific warranties of

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[8] Exchange Rule 6.7A currently limits the rights of any Trading Permit Holder or any person associated with a Trading Permit Holder to institute a lawsuit or other legal proceeding against the Exchange or any director, officer, employee, agent or contractor, or other official of the Exchange, or any subsidiary of the Exchange, for any actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary, except to the extent such actions or omissions constitute violations of the federal securities laws for which a private right of action exist. The rule also permits appeals of Exchange disciplinary actions as provided in Exchange Rule. Proposed amendments to Rule 6.7A (discussed below) would clarify that this limitation applies to committee members and affiliates of the Exchange.

merchantability or of fitness for a particular purpose. For the avoidance of doubt, the explicit list of the types of data for which the Exchange disclaims any warranties would also include, without limitation, "any current or closing index value, any current or closing value of interest rate options, or any report of transactions in or quotations for options or other securities, including underlying securities."[9]

The proposed rule change would also clarify that all limitations on liability and disclaimers within paragraph (a) of Rule 6.7 are in addition to, and not in limitation of, any limitations on liability otherwise existing under law. This proposed rule change is intended to ensure that the protection of Rule 6.7 does not circumscribe protections that otherwise would exist under the principles of law.[10] This and other limitations on liability operate independently from, and in addition to, both the current and proposed amended versions of Rule 6.7 and CBOE's other rules.

Proposed Limits on Discretionary Payments for Alleged Losses

Currently, Rule 6.7(b) provides that whenever custody of an unexecuted order is transmitted by a Trading Permit Holder to or through the Exchange's systems or to any other automated facility of the Exchange whereby the Exchange assumes responsibility for the transmission or execution of the order, and provided that the Exchange has acknowledged receipt of such order, the Exchange's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed certain limits set forth in Rule 6.7(b). The Exchange first proposes to provide that Rule 6.42(b) applies to quotes as well as unexecuted

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9 The Exchange also proposes to replace the phrase "facilities or services" with simply "facilities" in two locations within the existing text of Rule 6.7(a). The Exchange believes use of the term "services" is duplicative of the term "facilities" and is therefore unnecessary.

10 For example, as CBOE is organized under Delaware law, the principals of Delaware law also apply.

orders. Additionally, the Exchange proposes to eliminate the word "automated" from "automated facility of the Exchange", as not all facilities of the Exchange may be considered automated and the Exchange did not intend to restrict the scope of rule as such. The Exchange also seeks to amend Rule 6.7(b) to explicitly provide that, although the Exchange would not be liable with respect to regulated Exchange business for losses that arise out of the use or enjoyment of the facilities afforded by the Exchange and/or the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities, as provided in Rule 6.7(a),[11] the Exchange may make discretionary payments to Trading Permit Holders for certain losses alleged to have occurred due to Loss Events. Specifically, the proposed rule

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[11] Specifically, Rule 6.7(a), as proposed to be amended, would provide as follows:

> Neither the Exchange nor any of its directors, officers, committee members, other officials, employees, contractors, or agents, nor any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents ("Covered Persons") shall be liable to the Trading Permit Holders or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities afforded by the Exchange, any interruption in or failure or unavailability of any such facilities, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agents acting within the scope of their authority. Without limiting the generality of the foregoing, and subject to the same exception, no Covered Person shall have any liability to any person or entity for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, any current or closing value of interest rate options, or any reports of transactions in or quotations for options or other securities, including underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use or enjoyment of the facilities afforded by the Exchange, including without limitation, of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to any data described in the preceding sentence, and the Exchange makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, the provisions of Article Eighth of the Exchange's Certificate of Incorporation or any limitations otherwise available under law.

change would permit the Exchange to make discretionary payments to Trading Permit Holders for their losses alleged to have resulted from Loss Events up to the following limits. As to any one or more requests for compensation made by a single Trading Permit Holder that arose out of one or more Loss Events occurring on a single trading day, the Exchange could compensate the Trading Permit Holder up to but not exceeding the larger of $100,000 or the amount of any recovery obtained by the Exchange under applicable insurance maintained by the Exchange. As to the aggregate of all requests for compensation made by all Trading Permit Holders that arose out of one or more Loss Events occurring: (i) on a single trading day, the Exchange could compensate the Trading Permit Holders, in the aggregate, up to but not exceeding the larger of $250,000 or the amount of recovery obtained by the Exchange under any applicable insurance policy; and (ii) during a single calendar month, the Exchange could compensate the Trading Permit Holders, in the aggregate, up to but not exceeding the larger of $500,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange. The proposed rule change would also state that no request for compensation by a Trading Permit Holder may be in an amount less than $100. Losses incurred on the same trading day and arising out of the same underlying act or omission of the Exchange or failure of the Exchange's systems or facilities may be aggregated to meet the $100 minimum.[12] This is intended as a de minimis threshold to avoid requiring the Exchange to devote the resources to considering relatively small requests for payment. The proposed rule change also would state

[12] For example, if a TPH incurs a loss of $30 on one day due to a certain glitch in the Exchange's systems and a loss of $75 on the same day due to a separate unrelated glitch in the Exchange's systems, the TPH could not request compensation for either loss. However, if for example, the TPH incurs a loss of $105 on one day due to a certain glitch in the Exchange's system, the TPH may request compensation. In this second example, the TPH may request compensation even if such losses were incurred over a number of different transactions so long as it was the result of the same systems issue.

that nothing in Rule 6.7 would obligate the Exchange to seek recovery under any applicable insurance policy. The proposed changes to Rule 6.7(b) would therefore, consistent with Rule 6.7(a), permit the Exchange to make discretionary payments to Trading Permit Holders to compensate them for such losses, up to specified limits, even though the Exchange would not be legally liable to pay for such losses.

Timeframes within Which to Notify Exchange and Submit Requests

Proposed new Rule 6.7(c) would establish timeframes within which a valid request for compensation must be brought under the Rule. Under the proposed rule change, notice of all requests would be required to be in writing and to be submitted to the Exchange no later than 12:00 p.m. Central Time on the next business day following the Loss Event giving rise to such request. All requests would be required to be in writing and to be submitted, along with supporting documentation, by 5:00 p.m. Central Time on the third business day following the Loss Event giving rise to each such request.[13] Additional information related to the request as demanded by the Exchange is also required to be provided. The proposed rule change would also specify that the Exchange would not consider requests for which timely notice and submission had not been provided as required under amended Rule 6.7(c).

The proposed provisions of new Rule 6.7(c) would benefit Trading Permit Holders by providing them with clear timeframes within which to submit notices of requests, requests for compensation, and supporting documentation. The proposed changes would also provide the

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[13] Other exchanges have similar submission requirements. See, e.g., NYSE Rule 18 – Compensation in Relation to Exchange System Failure, which provides in relevant part that NYSE members provide oral notice to NYSE's Division of Floor Operations by the market opening on the next business day following the system failure and written notice by the end of the third business day following the system failure (T+3). See also, ISE Rule 705(d)(3) – Limitation of Liability, which provides that all claims for compensation must be made in writing and submitted no later than the opening of trading on the next business day following the event that gave rise to such claim.

Exchange with certainty as to the deadlines by which notices of requests and completed requests would be required to be submitted in order for the Exchange to consider them for compensation under Rule 6.7.

Exchange Treatment of Aggregate Requests Exceeding Maximum Amount Permitted to Be Paid

Currently, Rule 6.7(c) provides that if all of the claims cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for in paragraph (b) [of Rule 6.7] [sic], then such maximum amount would be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, written notice of which has been given to the Exchange no later than the opening of trading on the next business day following the day on which the use or enjoyment of Exchange facilities giving rise to the claim occurred, based upon the proportion that each claim bears to the sum of all such claims. The Exchange proposes to amend existing Rule 6.7(c), which would be renumbered to Rule 6.7(d), to state that, "if all of the timely requests submitted pursuant to paragraph (c) [of Rule 6.7] that are granted cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of payments authorized in paragraph (b) [of Rule 6.7], then such maximum amount shall be allocated among all such requests arising on a single trading day or during a single calendar month, as applicable, based upon the proportion that each such request bears to the sum of all such requests."

The Exchange notes that it is proposing to replace the term "claim" with the term "request", as well as replace the reference to "liability" with "payments authorized" to eliminate any implication of liability with respect to the Exchange and other Covered Person resulting from the use or enjoyment of the facilities offered by the Exchange, any interruption in or failure

or unavailability or any such facilities, or any action taken or omitted to be taken in respect of the business of the Exchange.

Additionally, the Exchange notes that proposed Rule 6.7(d) would continue to provide a fair way of allocating the limited payment that the rule would permit the Exchange to make when the total amount of eligible requests exceed that maximum amount. The proposal would also revise the timeframe in which requests for payment must be made by a Trading Permit Holder.

Exchange Review of Timely Requests

Proposed new Rule 6.7(e) would provide that the Exchange, in determining whether to make payment in response to a request for compensation, may determine whether the amount requested should be reduced based on the actions or inactions of the requesting Trading Permit Holder. The proposed rule change would permit the Exchange to consider, without limitation, whether the actions or inactions of the Trading Permit Holder contributed to the Loss Event; whether the Trading Permit Holder made appropriate efforts to mitigate its loss; whether the Trading Permit Holder realized any gains as a result of a Loss Event; whether the losses of the Trading Permit Holder, if any, were offset by hedges of positions either on the Exchange or on another affiliated or unaffiliated market; and whether the Trading Permit Holder provided sufficient information to document the request and as demanded by the Exchange. Proposed Rule 6.7(e) would therefore provide reasonable factors that the Exchange may consider in determining whether to pay compensation in response to a request and in determining the amount of any such compensation.[14]

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[14] Another exchange considered similar factors in determining whether to pay compensation and in determining the amount of any such compensation. See NYSE Rule 18, which provides in relevant part that the NYSE Compensation Review Panel in its review will determine whether the amount should be reduced based on the actions or inactions of the member organization, including whether the member organization made appropriate efforts to mitigate its loss.

The Exchange represents that the determination to compensate a Trading Permit Holder will be made on an equitable and non-discriminatory basis and without regard to the Exchange capacity of the Trading Permit Holder (including whether the Trading Permit Holder is a Designated Primary Market-Maker). Additionally, the Exchange represents that the Exchange will maintain a record of Trading Permit Holder requests including documentation detailing the Exchange's findings and details for approving or denying requests in accordance with its obligations under Section 17 of the Act.

Finality of Exchange Determinations under Rule

Proposed new Rule 6.7(f) would provide that all determinations by the Exchange pursuant to Rule 6.7 shall be final and not subject to appeal under Chapter XIX of the Exchange Rules.[15] The proposed rule would also provide that nothing in Rule 6.7, nor any payment made pursuant to Rule 6.7, shall in any way limit, waive or proscribe any defenses a Covered Person may have to any claim, demand, liability, action or cause of action, whether such defense arises in law or equity, or whether such defense is asserted in a judicial, administrative, or other proceeding.[16] These proposed changes are consistent with the discretionary nature of any payments that would be made under proposed Rule 6.7(b).

Treatment of Losses Occurring Prior to Effective Date of Rule

Proposed new paragraph 6.7(g) would establish July 1, 2015 as the Effective Date of revised Rule 6.7. Under proposed paragraph 6.7(g), claims for liability under prior versions of

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15 The Exchange notes that another exchange has a similar provision indicating that all determinations are final. See, NYSE Rule 18, which provides in relevant part that all determinations made pursuant to NYSE Rule 18 by NYSE's Compensation Review Panel, CEO or his or her designee are final.

16 Another exchange has a similar provision. See e.g., Nasdaq Rule 4626(b)(6), which provides that nothing in its Limitation of Liability rule shall waive Nasdaq's limitations on, or immunities from, liability as set forth in its Rules or agreements, or that otherwise apply as a matter of law.

Rule 6.7 would not be considered valid if brought with respect to any acts, omissions or transactions occurring more than one year prior to the Effective Date, or if brought more than one month after the Effective Date. Proposed Rule 6.7(g) would thereby provide certainty to the Exchange as to any expense it might incur due to Loss Events that occurred prior to the Effective Date of the proposed rule change, while also putting Trading Permit Holders on notice that they must file any claims for such losses by a date certain.

Deletion of Existing Interpretations under Rule 6.7

The proposed rule change would delete existing Interpretations .01 - .04 under Rule 6.7. Interpretation .01 states that Rule 7.11 governs the liability of the Exchange for claims arising out of the errors or omissions of an Order Book Official or his or her assistants or clerks or a PAR Official or his or her assistants or clerks. Under the proposed rule change, Rule 7.11 (as well as cross-references to Rule 7.11)[17] would be eliminated, making the interpretation unnecessary.

Interpretation .02 is reserved and would therefore be deleted. Interpretation .03 states that the provision of Exchange liability in paragraph (b) of current Rule 6.7 for certain orders routed through the Exchange's Order Routing System or E-Book shall not apply. Because the proposed rule change would eliminate Exchange liability under paragraph (b), the interpretation would no longer be necessary.

Interpretation .04 disclaims The Options Clearing Corporation liability to Trading Permit Holders and their associated persons with respect to their use, non-use or inability to use the

[17] Specifically, Rules 6.7, 7.12 and 21.18 are proposed to be amended to delete cross-references to Rule 7.11. In addition, the Exchange is proposing to amend Rule 21.18 to delete an outdated reference to Board Brokers, a floor function that no longer exists on the Exchange.

linkage that was part of the old Options Intermarket Linkage Plan (the "Old Linkage"). Because the Old Linkage is no longer operable, interpretation .04 is no longer necessary.[18]

Conforming Changes to Other Rules

The proposed rule change would make conforming changes to Exchange Rules 2.24 and 6.7A. Rule 2.24 requires a Trading Permit Holder who fails to prevail in a lawsuit or other legal proceeding instituted against the Exchange or certain related parties to pay for the Exchange's reasonable costs of defending such lawsuit or proceeding if those costs exceed $50,000. Rule 6.7A limits the legal proceedings a Trading Permit Holder may bring against the Exchange and certain related persons for actions or omissions.

Under the proposed amendments to Rules 2.24, contractors would be included within the list of related parties protected by that rule, just as they would be included as Covered Persons under proposed Rule 6.7. As stated above, this proposed change is necessary because the Exchange at times contracts with outside firms to provide products or services to Trading Permit Holders in connection with regulated business conducted on or through the Exchange and that arise out of the use or enjoyment of the facilities afforded by the Exchange and/or the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities.

In addition, under the proposed amendments to Rule 2.24, other officials and contractors of the Exchange and any subsidiaries and affiliates of the Exchange and any such subsidiaries' and affiliates' directors, officers, committee members, other officials, employees, contractors, or agents would be explicitly identified/included within the list of related parties protected by the

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18 The old Options Intermarket Linkage Plan was replaced by the Options Order Protection and Locked/Crossed Markets Plan in 2009. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

rule,[19] just as they are proposed to be specifically identified/included within the list of Covered Persons under Rule 6.7. Committee members and affiliates of the Exchange and any subsidiaries' and affiliates' directors, officers, committee members, other officials, employees, contractors and agents would also be explicitly identified/included within the list of related parties under Rule 6.7A.[20] These changes are intended to conform the text of the three rules and to include affiliates within all three rules.[21] Moreover, under the proposed amendments to Rule 6.7A, committee members would be explicitly identified/included within the list of related parties protected by the rule, just as they are already specifically identified/included within the list of Covered Persons under existing Rule 6.7 and the similar provision in Rule 2.24. This is also intended to conform the text of the three rules. Finally, under the proposed amendments to Rule 6.7A, the title to the rule will be revised.[22]

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19 Specifically, the phrase "the Exchange or any of its directors, officers, committee members, employees or agents" is proposed to be replaced with the phrase "the Exchange or any of its directors, officers, committee members, other officials, employees, contractors, or agents, or any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents" in Rule 2.24.

20 Specifically, the phrase "the Exchange or any director, officer, employee, contractor, agent or other official of the Exchange or any subsidiary of the Exchange" is proposed to be replaced with the phrase "the Exchange or any of its directors, officers, committee members, other officials, employees, contractors, or agents, or any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents" in Rule 6.7A.

21 The Commission notes CBOE's statement of the purpose of its proposed rule change is to eliminate any implication of liability for losses arising out of the use or enjoyment of Exchange facilities consistent with existing law where courts have recognized the importance of protecting exchanges from liability in the context of matters arising out of the SRO function. See supra note 5 and accompanying text.

22 Specifically, the title "Legal Proceedings Against the Exchange and its Directors, Officers, Employees, Contractors or Agents" is proposed to be changed to simply "Legal Proceedings Against the Exchange." Cross-references to Rule 6.7A contained in Appendix A of Chapters XLVII – XLIX and Appendix A of Chapters L – LIV Appendix A are also proposed to be updated to reflect the new title. Additionally, cross-references to

The proposed rule change would also delete Rule 7.11 in its entirety. Rule 7.11 currently governs the liability of the Exchange relating to losses resulting from the errors or omissions of Exchange Order Book Officials and PAR Officials. Rule 7.11 provides that the Exchange's liability arising out of any errors or omissions of an Order Book Official or PAR Official (or their assistants or clerks) shall be subject to the limitations set forth in paragraph (a) of existing Rule 6.7, and to further limitations set forth in paragraph (b) and (c) of Rule 7.11. Under paragraph (b) of Rule 7.11, absent reasonable justification or excuse, any single claim[23] by a Trading Permit Holder or person associated with a Trading Permit Holder for losses arising from errors or omissions of an Order Book Official or PAR Official, and any claim by the Exchange

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Rule 2.24 contained in Appendix A of Chapters XLVII – XLIX and Appendix A of Chapters L – LIV Appendix A are proposed to be updated to include consistent capitalization of words in the Rule's title.

23 Under paragraph (b), the term "transaction" means any single order or instruction which is placed with an Order Book Official or PAR Official, or any series of orders or instructions which is placed with an Order Book Official or a PAR Official at substantially the same time by the same Trading Permit Holder and which relates to any one or more series of options of the same class. All errors and omissions made by an Order Book Official or PAR Official with respect to or arising out of any transaction shall give rise to a "single claim" against the Exchange for losses resulting therefrom as provided in paragraph (b) and in paragraph (c), and the Exchange is free to assert any defense to such claim it may have. No claim shall arise as to errors or omissions which are found to have resulted from any failure by a Trading Permit Holder (whether or not the Trading Permit Holder is claiming against the Exchange pursuant to paragraph (b)), or by any person acting on behalf of a Trading Permit Holder, to enter or cancel an order with such Order Book Official or PAR Official on a timely basis or clearly and accurately to communicate to such Order Book Official or PAR Official: (i) the description or symbol of the security involved; (ii) the exercise price or option contract price; (iii) the type of option; (iv) the number of trading units; (v) the expiration month; or (vi) any other information or data which is material to the transaction. In addition, no claim shall be allowed if, in the opinion of the arbitration panel, the Trading Permit Holder or other person making such claim did not take promptly, upon discovery of the errors or omissions, all proper steps to correct such errors or omissions and to establish the loss resulting therefrom. See Rule 7.11(b)(1).

made pursuant to paragraph (d) of the Rule,[24] must be presented in writing to the opposing party within ten business days following the transaction giving rise to the claim.[25] All disputed claims shall be referred to binding arbitration before an arbitration panel whose resolution of the dispute shall be final, and there shall be no appeal to the Board of Directors from a decision of such panel. Under paragraph (c), liability under Rule 7.11 is limited as follows: Should a Trading Permit Holder, TPH organization or the Exchange fail to close out an uncompared trade in the period of time provided by Rule 10.1, then the opposing party's liability with respect to any claims arising from such trade shall be limited to the lesser of (i) the loss which would have been experienced by the claimant if the uncompared trade had been closed out at the opening of trading on the day provided in Rule 10.1 for the closing out of such uncompared trade; or (ii) the actual loss realized by the claimant.

Under the proposed rule change, Rule 6.7 would govern the liability of the Exchange for claims arising out of any errors or omissions by agents of the Exchange, which would include Order Book Officials, PAR Officials and their respective assistants or clerks. Rule 7.11 therefore would be rendered superfluous. The Exchange does note that, with the elimination of Rule 7.11, both the Exchange's reciprocal right to bring a claim against Trading Permit Holders and the arbitration process for disputed claims will be eliminated. The Exchange no longer believes it is necessary to single out the errors or omissions of Order Book Officials and PAR

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24 Under paragraph (d), if any damage is caused by an error or omission of an Order Book Official or PAR Official which is the result of any error or omission of a TPH organization, then such TPH organization shall indemnify the Exchange and hold it harmless from any claim of liability resulting from or relating to such damage. See Rule 7.11(d).

25 Provided, that if an error or omission has resulted in an unmatched trade, then any claim based thereon shall be presented after the unmatched trade has been closed out in accordance with Rule 10.1, Disagreement on Unmatched Trades, but within ten business days following such resolution of the unmatched trade. See Rule 7.11(b)(2).

Officials in the manner described under Rule 7.11 as compared to other errors and omissions that are subject to Rule 6.7.[26] As simplified and revised, Rule 6.7 would apply equally to all types of claims by Trading Permit Holders against Covered Persons, including Order Book Officials and PAR Officials.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act")[27] in general and furthers the objectives of Section 6(b)(5) of the Act[28] in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal would amend Exchange Rule 6.7 to eliminate any implication of liability with respect to the Exchange and other Covered Person resulting from the use or enjoyment of the facilities offered by the Exchange, any interruption in or failure or unavailability or any such facilities, or any action taken or omitted to be taken in respect of the business of the Exchange. The proposed rule change is consistent with and supplements existing law, and would assist the Exchange in fulfilling its role as a national securities exchange by avoiding the risk of tempering this critical regulatory function to avoid the disruption and expense of unnecessary litigation or potential catastrophic loss.

The proposal would also permit the Exchange to compensate Trading Permit Holders for their losses incurred due to a Loss Event, even though the Exchange would not have legal

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26 The Exchange also notes that, in practice, there have not been any disputed claims submitted to the arbitration process under Rule 7.11 for several years.

27 15 U.S.C. 78f(b).

28 15 U.S.C. 78f(b)(5).

liability for those losses. The proposed rule change would therefore facilitate the Exchange's ability to make discretionary payments to redress a situation in which Trading Permit Holders suffer losses due to a Loss Event. As stated above, the Exchange represents that the determination to compensate a Trading Permit Holder will be made on an equitable and non-discriminatory basis without regard to the Exchange capacity of the Trading Permit Holder, including whether the Trading Permit Holder is a Designated Primary Market-Maker. The Exchange therefore believes the proposed rule change is consistent with the Act, and Section 6(b)(5) of the Act in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange also believes that these policies would promote fairness in the national market system. The proposed rule change would allow CBOE to address Trading Permit Holder requests for compensation under various circumstances and would allow CBOE to act in a fashion similar to many of its competitors. As stated above, several exchanges have substantially similar rules to those proposed here, and the Exchange believes that the proposed rule change would place CBOE in a similar position to address Trading Permit Holder requests.[29] The Exchange believes that to the extent there are any differences, such differences are not substantive and are still consistent with the scope of prior self-regulatory organization rulemaking.

Finally, the Exchange believes that as Rule 6.7 will now govern the liability of the Exchange for claims arising out of any errors or omissions by agents of the Exchange (which

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[29] See BOX Rule 7230 and EDGA Rule 11.14; see also NASDAQ Stock Market LLC ("Nasdaq") Rule 4626, ISE Rule 705, BATS Exchange, Inc. Rule 11.16, and NYSE Rule 18.

would include Order Book Officials, PAR Officials and their respective assistants or clerks), Rule 7.11 is superfluous and unnecessary to maintain in the rules. Additionally, the Exchange no longer believes it is necessary to single out the errors or omissions of Order Book Officials and PAR Officials in the manner described under Rule 7.11 as compared to other errors and omissions that are subject to Rule 6.7. The Exchange notes that although the Exchange's reciprocal right to bring a claim against Trading Permit Holders and the arbitration process for disputed claims will be eliminated, such language is no longer necessary .[30] As such, the Exchange believes that eliminating Rule 7.11 maintains clarity in the rules and avoids potential confusion, which removes impediments and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

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

The Exchange believes that this proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the Exchange believes that these policies would promote fairness in the national market system. The proposed rule change would allow CBOE to address Trading Permit Holder requests for compensation under various circumstances and would allow CBOE to act in a fashion similar to many of its competitors. In addition, as stated above, several exchanges have substantially similar rules to those proposed here, except as otherwise noted, and the Exchange believes that the proposed rule change would place CBOE in a similar position to address Trading Permit Holder requests.[31]

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30 In practice, there have not been any disputed claims submitted to the arbitration process under Rule 7.11 for several years.

31 Id.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to 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 Act[32] and Rule 19b-4(f)(6)[33] 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. 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

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32 15 U.S.C. 78s(b)(3)(A).

33 17 CFR 240.19b-4(f)(6). 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.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2015-042 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2015-042. 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 St. 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-2015-042, 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.[34]

Robert W. Errett,
Deputy Secretary.

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[34] 17 CFR 200.30-3(a)(12).