This document is scheduled to be published in the
Federal Register on 11/26/2012 and available online at
http://federalregister.gov/a/2012-28594, and on **FDsys.gov**

8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68262; File No. SR-CBOE-2012-108)

November 19, 2012

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change to Address Authority to Cancel Orders When a Technical or Systems Issue Occurs and to Describe the Operation of Routing Service Error Accounts

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on November 8, 2012, the 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 self-regulatory organization. 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 is proposing to amend its rules to (i) address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (ii) describe the operation of an Exchange error account(s) and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service. The text of the rule proposal is available on the Exchange's website (http://www.cboe.org/legal), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

---

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

2 15 U.S.C. 78a.

3 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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt new Rule 6.6A to address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs and to adopt new Rule 6.14C to describe the operation of an Exchange error account(s)("Exchange Error Account(s)") and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service.

By way of background, the Exchange operates a "hybrid" style system of trading that allows automatic executions to occur electronically and open outcry trades to occur on the floor of the Exchange. As part of this infrastructure, the Exchange also automatically routes orders to other exchanges under certain circumstances. These routing services are provided in conjunction with one or more routing brokers that are not affiliated with the Exchange.[4] Mechanically, when the Exchange receives an order from a Trading Permit Holder ("TPH") that is held in the

[4] See, e.g., Rule 6.14B, Order Routing to Other Exchanges.

Exchange system and determines to route an order to another exchange, the Exchange provides the routing broker with a corresponding order and instructions to route the order to another exchange(s). The routing broker then sends the corresponding order to the other exchange.[5]

In the normal course, the routing broker reports an execution or cancellation of the routed order back to the Exchange. Routed orders that are executed at another exchange are submitted for clearance and settlement in the name of the routing broker. The routing broker then coordinates with the Exchange to arrange for any resulting securities positions to be delivered to the TPH that submitted the original order to the Exchange (i.e., upon receipt of a filled execution report for the routed order, the Exchange system pairs the execution against the TPH's original order being held in the Exchange system and reports the pairing for clearance and settlement purposes by submitting a non-tape, clearing only transaction).

From time to time, the Exchange encounters situations in which it becomes necessary to cancel orders (or release routing-related orders) and resolve error positions that result from errors of the Exchange, routing brokers, or another exchange.[6]

---

[5] Generally, the routing brokers route the orders directly to other exchanges. However, it is possible that a routing broker may route orders to another exchange through a third-party broker-dealer. In those cases, the third-party broker-dealer would route the orders to the other exchange in its name, and any executions would be submitted for clearance and settlement in the name of the routing broker so that any resulting positions are delivered to the routing broker upon settlement. As described above, normally the routing broker would then coordinate with the Exchange to arrange for any resulting securities positions to be delivered to the TPH that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 6.14C) result in connection with the routing broker's use of a third-party broker-dealer for outbound routing, and those positions are delivered to the routing broker through the clearance and settlement process, those positions would be permitted to be resolved in accordance with proposed Rule 6.14C. If the third-party broker-dealer received error positions and the positions were not delivered to the routing broker through the clearance and settlement process, then the third-party broker-dealer would resolve those positions itself, and the positions would not be permitted to be resolved as set forth in proposed Rule 6.14C.

[6] The examples described in this filing are not intended to be exclusive. Proposed Rule

Proposed Rule 6.6A (Order Cancellation/Release)

The Exchange proposes to adopt new CBOE Rule 6.6A to address the authority of the Exchange to cancel orders when a technical or systems issue occurs. Specifically, paragraph (a) of the proposed rule would expressly authorize the Exchange to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange,[7] the routing broker, or another exchange to which an Exchange order has been routed. Paragraph (a) would also provide that a routing broker may only cancel orders being routed to another exchange based on the Exchange's standing or specific instructions or as otherwise provided in the Exchange Rules.[8] Paragraph (a) would also provide that the Exchange shall provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.

6.6A would provide general authority for the Exchange to cancel orders (or release routing-related orders) in order to maintain fair and orderly markets when technical or systems issues are occurring, and proposed Rule 6.14C also would set forth the manner in which error positions (which may occur in the provision of the Exchange's routing service) may be handled by the Exchange. The proposed rule change is not limited to addressing order cancellation (release) or error positions resulting only from the specific examples described in this filing.

7 To confirm, the authority to cancel orders to maintain fair and orderly markets under proposed Rule 6.6A would apply to any technical or systems issue at the Exchange and would include any orders at the Exchange (i.e., the authority to cancel orders would apply to any orders that are subject to the Exchange's routing service and any orders that are not subject to the Exchange's routing service). By comparison, the routing service error account provisions under proposed Rule 6.14C (discussed below) would apply only to original and corresponding orders that are subject to the Exchange routing service.

8 As discussed above, the Exchange uses non-affiliated routing brokers to provide the routing services. These routing brokers are also not facilities of the Exchange. For all routing services, the Exchange determines the logic that provides when, how and where orders are routed away to other exchanges. The routing broker receives the routing instructions from the Exchange to route orders to other exchanges and to report executions back to the Exchange. The routing broker cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order. See Rule 6.14B(c), (e) and (f). Under paragraph (a) to proposed Rule 6.6A, the decision to take action with respect to orders affected by a technical or systems issue shall be made by the Exchange. Depending on where those orders are located, a routing broker would be permitted to initiate a cancellation of an order(s) pursuant to the

Paragraph (b) of the proposed rule provides that the Exchange may also determine to release orders being held on the Exchange awaiting an away exchange execution as it deems to be necessary to maintain fair and orderly markets if a technical or systems issues occurs at the Exchange, a routing broker, or another exchange to which an order has been routed (the process for "releasing" orders is illustrated in more detail below). Paragraph (c) of the proposed rule would provide that, for purposes of Rule 6.6A, technical or system issues would include, without limitation, instances where the Exchange has not received confirmation of an execution (or cancellation) on another exchange from a routing broker within a response time interval designated by the Exchange, which interval may not be less than three (3) seconds.[9]

The examples set forth below describe some of the circumstances in which the Exchange may decide to cancel (or release) orders.

> Example 1: If a routing broker or another exchange experiences a technical or systems issue that results in the Exchange or routing broker not receiving responses to immediate-or-cancel ("IOC") orders sent to the other exchange, and that issue is not resolved in a timely manner, then the Exchange may seek to cancel the routed orders affected by the issue.[10] For instance, if a routing broker experiences a connectivity issue affecting the

---

Exchange's standing or specific instructions or as otherwise provided in the Exchange Rules (e.g., the Exchange's standing instructions might provide, among other things, that the routing broker could initiate the cancellation of orders if the routing broker is experiencing technical or systems issues routing orders to an away exchange).

9 A determination by the Exchange to cancel or release orders may not cause the Exchange to declare self-help against the other exchange pursuant to paragraph (b)(1) of Rule 6.81, Order Protection. If the Exchange determines to cancel or release orders, as applicable, under proposed Rule 6.6A but does not declare self-help against that other exchange, the Exchange would continue to be subject to the trade-through requirements in Rule 6.81 with respect to that exchange.

10 In a normal situation (i.e., one in which a technical or systems issue does not exist), the Exchange should receive an immediate response back from the routing broker reporting any executions or cancellations from the other exchange, and would then pass the

manner in which it sends and receives order messages to or from another exchange, it may be unable to receive timely execution or cancellation reports from the other exchange, and Exchange may consequently seek to cancel the affected routed orders (e.g., by calling the routing broker and instructing the routing broker to attempt to cancel the orders) or perhaps the routing broker may initiate the cancellation of the affected routed orders pursuant to a standing or specific instruction from the Exchange. In these circumstances, the Exchange would also attempt to release the initial orders submitted by TPHs.[11]

Example 2: If the Exchange does not receive confirmation of an execution (or cancellation) of an IOC order sent to another exchange from a routing broker within a designated response time interval of three (3) seconds, then an automated system feature will release the initial order being held by the Exchange.[12] The Exchange would also attempt to cancel the routed order in these circumstances.[13]

---

resulting fill or cancellation onto the TPH. If, after submitting an order for which a corresponding order has been routed to another exchange, a TPH sends an instruction to cancel the original order, the cancellation is held by the Exchange until a response is received from the routing broker on the corresponding order. For instance, if the other exchange executes the corresponding order, the execution would be passed onto the TPH and the cancellation instruction on the TPH's original order would be disregarded.

11 Once an initial order is released, any cancellation that a TPH submitted to the Exchange on the initial order during such a situation would be honored. If a TPH did not submit a cancellation to the Exchange, however, that initial order would remain "live" and thus be eligible for execution or posting on the Exchange, and the Exchange would not treat any execution of the initial order or any subsequent routed order related to that initial order as an error (unless, of course, the order was itself subject to another technical or systems issue or any away exchange processing exceeded the applicable response time interval).

12 This routing risk management feature would serve as one means for the Exchange to efficiently determine if there is a technical or system issue occurring. The feature, and the system functionality used to operate the feature, is generally modeled after a process that was utilized by the Exchange under the former Options Intermarket Linkage Plan (the "Old Linkage Plan"). Under the Old Linkage Plan, an eligible market maker that sent a "principal acting as agent order" (referred to as a "P/A Order") through the linkage

Example 3: If the Exchange experiences a systems issue, the Exchange may take steps to cancel and/or release all outstanding orders affected by the issue (which orders may

and who did not receive a reply from the away exchange within 30 seconds was able to reject any response received thereafter purporting to report a total or partial execution of that order. Over time, the time frame in which an away exchange was required to respond was ultimately reduced to 3 seconds. See, e.g., Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000)(order approving Options Intermarket Linkage Plan submitted by the American Stock Exchange LLC, Chicago Board Options Exchange, Inc., and International Securities Exchange LLC) and 57238 (January 30, 2008), 73 FR 6748 (February 5, 2008)(order approving joint amendment no. 25 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to Response Time for Certain Orders Sent Through the Linkage). The Old Linkage Plan was replaced by the Options Order Protection and Locked/Crossed Markets Plan (the "Distributive Options Linkage Plan") in 2009. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009)(order approving the National Market System Plan relating to Options Order Protection and Locked/Crossed Markets submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.). Although there is no longer a similar provision for P/A Orders and away exchange response times under the Distributive Options Linkage Plan, the Exchange still has system functionality that tracks response times for orders routed to away exchanges. The primary distinction between the process under the Old Linkage Plan and the process described in the current proposed rule change is that, instead of rejecting an execution report back to the away exchange, an execution report received after the TPH's order is released would be considered an error and subject to the Exchange Error Account procedures discussed below. The Exchange views having this ability to release orders that are queued waiting for a responsive execution/cancel report for a corresponding order from an away exchange as an important risk management feature. Because the markets are highly automated, the Exchange would normally expect to receive a response to an order routed through the routing service within milliseconds after it is sent. If a response is not received in a timely manner, it generally is an indication of a system problem with the other exchange, the routing broker(s) or the Exchange. In addition, especially in fast-moving markets like the options market, the Exchange believes allowing for the release of a TPH's related original order due to an untimely response will provide an opportunity for the transmittal of responses while also allowing the Exchange's TPHs to address and execute orders pending on the Exchange in a timely manner. The Exchange believes this contributes to the Exchange's ability to maintain fair and orderly markets.

13 It is possible that attempts to cancel the routed orders may not succeed. If the Exchange receives an execution report on the order that had been routed to an away exchange, then the unmatched execution would be considered an "error position" under proposed Rule 6.14C.

include orders that may or may not be subject to routing services). The Exchange would also attempt to cancel any routed orders related to the TPHs' initial orders, if applicable, in these circumstances.[14]

Proposed Rule 6.14C (Routing Service Error Accounts)

Proposed Rule 6.14C would provide that each routing broker shall maintain, in the name of the routing broker, one or more accounts for the purpose of liquidating unmatched trade positions that may occur in connection with the away exchange routing service provided under Rule 6.14B ("error positions").[15] In addition, the Exchange may also maintain, in the name of the Exchange, one or more Exchange Error Accounts for the purpose of liquidating error positions in the circumstances described below.

Paragraph (a) of the proposed rule would provide that errors to which the rule would apply include any action or omission by the Exchange, a routing broker, or another exchange to which an Exchange order has been routed, either of which result in an unmatched trade position due to the execution of an original or corresponding order that is subject to the away market routing service and for which there is no corresponding order to pair with the execution (each a "routing error"). Such routing errors would include, without limitation, positions resulting from determinations by the Exchange to cancel or release an order pursuant to proposed Rule 6.6A (as described above).

---

14 It is possible that attempts to cancel the routed orders may not succeed. If the Exchange receives an execution report on the order that had been routed to an away exchange, then the unmatched execution would be considered an "error position" under proposed Rule 6.14C.

15 The Exchange notes that, in connection with providing routing services, routing brokers currently may utilize their own error accounts to liquidate error positions. The Exchange believes it is reasonable and not inappropriate to address routing errors through the error account of a routing broker because, among other reasons, it is the executing broker associated with these transactions.

Paragraph (b) of the proposed rule would provide that, generally, each routing broker will utilize its own error account to liquidate error positions. However, in certain circumstances, the Exchange may utilize an Exchange Error Account. In particular, in instances where the routing broker is unable to utilize its own error account (e.g., due to a technical, systems or other issue that prevents the routing broker from doing so) or where the an error is due to a technical or systems issue at the Exchange, the Exchange may (but would not be required to) determine it is appropriate to utilize an Exchange Error Account. In making such a determination to utilize an Exchange Error Account, the Exchange would consider whether is has sufficient time, information and capabilities considering the market circumstances to determine that an error is due to such circumstances and whether the Exchange can address the error.

The Exchange believes it is reasonable and appropriate to address routing errors through the error account of a routing broker in the manner proposed because, among other reasons, it is the executing broker associated with these transactions. The Exchange also believes that having the flexibility to determine to utilize an Exchange Error Account in the limited circumstances described above allows for administrative convenience and contributes to the Exchange's ability to maintain a fair and orderly market.[16] From a TPH perspective, there would be no impact resulting from the decision to use an Exchange Error Account or the routing broker's error account to liquidate the error position in these circumstances.

By definition, an error position in an Exchange Error Account would only include unmatched trades due to a routing error. In that regard, paragraph (c) of the proposed rule would

---

16 The Exchange notes that any profit/loss from liquidating the error positions would belong to the Exchange (when an Exchange Error Account is utilized) or the routing broker (when the routing broker's error account is utilized). However, all or any portion of such profits/losses may be subject to certain contractual obligations pursuant to the routing service agreement between the Exchange and the routing broker (e.g., used to offset certain contractual obligations).

provide that the Exchange shall not accept any positions in an Exchange Error Account from an account of a Trading Permit Holder or permit any Trading Permit Holder to transfer any positions from the Trading Permit Holder's account to an Exchange Error Account.[17]

To the extent a routing broker utilizes its own account to liquidate error positions, paragraph (d) of the proposed rule provides that the routing broker shall liquidate the error positions as soon as practicable. The routing broker could determine to liquidate the position itself or have a third party broker-dealer liquidate the position on the routing broker's behalf. Paragraph (d) also provides that the routing broker establish and enforce policies and procedures reasonably designed to (i) adequately restrict the flow confidential and proprietary information associated with the liquidation of the error position in accordance with Rule 6.14B,[18] and (ii) prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions. In addition, paragraph (d)

---

17 The Exchange may address error positions under the proposed rule that are caused by the errors noted above, but the Exchange may not accept from a TPH positions that are delivered to the TPH through the clearance and settlement process, even if those positions may have been the result of an error. This would not apply, however, to situations like the one described below in which the Exchange incurred a position to settle a TPH purchase, as the TPH did not yet have a position in its account as a result of the purchase at the time of the Exchange's action, i.e., the Exchange's action was necessary for the purchase to settle into the TPH's account. Moreover, to the extent a TPH receives positions in connection with an error or other technical or systems issue, the TPH may seek to rely on other Exchange Rules such as Rule 6.7, Exchange Liability, if it experiences a loss. For example, Rule 6.7 provides TPHs with the ability to file claims for negligent acts or omissions of Exchange employees or for the failure of its systems or facilities.

18 Rule 6.14B(b) provides that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker, and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services.

provides that the routing broker shall make and keep records associated with the liquidation of such routing broker error positions and shall maintain such records in accordance with Rule 17a-4 under the Act.[19]

Paragraph (e) of the proposed rule would provide that, to the extent an Exchange Error Account is utilized to liquidate error positions, the Exchange shall liquidate the error positions as soon as practicable. In liquidating error positions in an Exchange Error Account, the Exchange shall provide complete time and price discretion for the trading to liquidate error positions in an Exchange Error Account to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[20] Such a third-party broker-dealer may include a routing broker not affiliated with the Exchange. Paragraph (e) would also provide that the Exchange shall establish and enforce policies and procedures reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the third-party broker-dealer associated with the liquidation of the error positions. Finally, paragraph (e) would provide that the Exchange shall make and keep records to document all determinations to treat positions as error positions under the rule (whether or not an Exchange Error Account is utilized to liquidate such error positions), as well as records associated with the liquidation of Exchange Error Account error positions through a third-party broker-dealer, and shall maintain such records in accordance with Rule 17a-1 under the Act.[21]

---

19 17 CFR 240.17a-4.

20 This provision is not intended to preclude the Exchange from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, the Exchange might instruct the broker to treat all orders as “not held” and to attempt to minimize any market impact on the price of the option being traded.

21 17 CFR 240.17a-1.

Examples of such error positions due to a routing error may include, without limitation, the following:

- <u>Example 4</u>: Error positions may result from routed orders that the Exchange or a routing broker attempts to cancel but that are executed before the other exchange receives the cancellation message or that are executed because the other exchange is unable to process the cancellation message. Using the situation described in Example 1 above, assume the Exchange seeks to release the initial orders being held by the Exchange because it is not receiving timely execution or cancellation reports from another exchange. In such a situation, although the Exchange would attempt to direct the routing broker to cancel the routed corresponding orders, the routing broker may still receive executions from the other exchange after connectivity is restored, which would not then be allocated to TPHs because of the earlier decision to release the affected initial orders. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions (or if the error position is due to a system or technical issue on the Exchange), the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.
- <u>Example 5:</u> Error positions may result from an order processing issue at another exchange. For instance, if another exchange experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order for clearance and settlement. In such a situation, the Exchange would not then allocate

the execution to the TPH because of the earlier cancellation message from the other exchange. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.

- Example 6: Error positions may result if a routing broker receives an execution report from another exchange but does not receive clearing instructions for the execution from the other exchange. For instance, assume that a TPH sends the Exchange an order to buy 10 ABC option contracts, which causes the routing broker to send an order to another exchange that is subsequently executed, cleared and closed out by that other exchange, and the execution is ultimately communicated back to the TPH. On the next trading day (T+1), if the other exchange does not providing clearing instructions for that execution, the Exchange/routing broker would still be responsible for settling that TPH's purchase and therefore would be left with open positions.[22] Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.

---

22 To the extent that a loss is incurred in covering the position, the routing broker (on behalf of the Exchange or itself) may submit a reimbursement claim to that other exchange.

- Example 7: Error positions may result from a technical or systems issue that causes orders to be executed in the name of a routing broker in connection with its routing services function that are not related to any corresponding initial orders of TPHs. As a result, the Exchange would not be able to assign any positions resulting from such an issue to TPHs. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, the Exchange may determine to post the positions into an Exchange Error Account and resolve the positions in the manner described above.[23]

In each of the circumstances described above, the Exchange and its routing broker may not learn about an error position until T+1. For instance, the Exchange and its routing broker may not learn about an error position until either (i) during the clearing process when a routing destination has submitted to The Options Clearing Corporation ("OCC") a transaction for clearance and settlement for which the Exchange/routing broker never received an execution confirmation, or (ii) when another exchange does not recognize a transaction submitted by a routing broker to OCC for clearance and settlement. Moreover, the affected TPHs' trade may not be nullified absent express authority under Exchange Rules.[24] As such, the Exchange believes that use of a routing broker error account (or an Exchange Error Account, as applicable) to liquidate the error positions that may occur in these circumstances is reasonable and appropriate in these circumstances.

---

23 To the extent such positions are not related to the routing broker's function as an Exchange routing broker (i.e., originating with the Exchange), the Exchange would not post such positions to an Exchange Error Account. The routing broker would resolve the error positions itself.

24 See, e.g., Rule 6.25, Nullification and Adjustment of Options Transactions.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[25] in general and furthers the objectives of Section 6(b)(5) of the Act[26] in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 believes that this proposed rule change is in keeping with those principles since the Exchange's ability to cancel and release orders during a technical or systems issue and to maintain an Exchange Error Account facilitates the smooth and efficient operation of the market. Specifically, the Exchange believes that allowing the Exchange to cancel and release orders during a technical or systems issue (and permitting its routing brokers to cancel orders pursuant to standing or specific instructions or as otherwise permitted under Exchange Rules) would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing a routing broker to assume error positions in its own account(s) to liquidate those positions (or allowing the Exchange to assume error positions in an Exchange Error Account to liquidate those positions in instances where a routing broker is unable to do so or where the routing error is due to a technical or systems issue at Exchange) subject to the conditions set forth in proposed Rule 6.14C would be the least disruptive means to address these errors. Overall, the proposed new rule is designed to ensure full trade certainty to market participants and to avoid disrupting the clearance and settlement process. The proposed new rule is also designed to provide a consistent methodology for handling error positions in a manner

---

25 15 U.S.C. 78f(b).

26 15 U.S.C. 78f(b)(5).

that does not discriminate among TPHs. The proposed new rule is also consistent with Section 6 of the Act insofar as it would require the Exchange (and its routing brokers, as applicable) to establish controls to restrict the flow of any confidential information associated with the liquidation of error positions.

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 not necessary or appropriate in furtherance of the purposes of the Act.

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 proposal.

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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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-2012-108 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2012-108. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also 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-2012-108 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.[27]

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2012-28594 Filed 11/23/2012 at 8:45 am; Publication Date: 11/26/2012]

---

[27] 17 CFR 200.30-3(a)(12).