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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75299; File No. SR-CBOE-2015-047]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to Floor Broker Due Diligence

June 25, 2015

I. Introduction

On May 5, 2015, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act"),[2] and Rule 19b-4 thereunder,[3] a proposed rule change to amend Exchange rules related to Floor Broker due diligence. The proposed rule change was published for comment in the Federal Register on May 22, 2015.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 See Securities Exchange Act Release No. 74990 (May 18, 2015), 80 FR 29767 ("Notice").

CBOE proposes to amend several rules to address certain order handling obligations on the part of its Floor Brokers. Specifically, whether orders sent to Floor Brokers are presumed to be "Held" or "Not Held." A "Not Held" order generally is one where the customer gives the Floor Broker discretion in executing the order, both with respect to the time of execution and the price (though the customer may specify a limit price), and the Floor Broker works the order over a period of time to avoid market impact while seeking best execution of the order. A "Held" order generally is one where the customer seeks a prompt execution at the best currently available price or prices.

Currently, CBOE Rule 6.53 (Certain Order Types Defined) defines a "Not Held Order" as an order that is marked as "not held" or "take time," or "which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed." CBOE Rule 6.75 (Discretionary Transactions) further provides that "[u]nder normal market conditions, and in the absence of a 'not held' instruction, a Floor Broker may not exercise time discretion on market or marketable limit orders and shall immediately execute such orders at the best price or prices available."

CBOE now proposes to amend Exchange Rule 6.75, as well as Rules 6.53 and 6.73, to establish a different default status for orders sent to Floor Brokers. Specifically, CBOE proposes to add a new Interpretation and Policy .06 to CBOE Rule 6.73 (Responsibilities of Floor Brokers) to specify that an order entrusted to a Floor Broker will be considered a Not Held Order unless (i) a Floor Broker's customer otherwise specifies or (ii) the order was electronically received by the Exchange and subsequently routed to a Floor Broker or PAR Official pursuant to the order entry firm's routing instructions. The Exchange also proposes to add additional language to the Not Held Order definition in CBOE Rule 6.53(g) that mirrors the language it proposes to add to Rule 6.73. Finally, the Exchange proposes to amend CBOE Rule 6.75, which addresses a Floor Broker's discretion in executing orders, to delete the sentence that specifies that a Floor Broker may not exercise time discretion on an order under normal market conditions unless the order was marked "not held."

The consequence of these proposes changes, taken together, will result in a change to the default order handling obligations for orders sent to Floor Brokers. Whereas Floor Brokers are currently obligated by CBOE Rule 6.75 to immediately execute orders at the best available prices under normal market conditions unless the customer provides a Not Held instruction on the order, CBOE's proposal will consider all orders sent to Floor Brokers to be "Not Held" by default unless the customer specifies or if the order is delivered to CBOE electronically in such a manner as to suggest that the customer is seeking a prompt execution of a marketable order at the best available prices.

In its filing, the Exchange states that CBOE Rules 6.73 and 6.75 were adopted prior to electronic trading and thus did not contemplate the interaction between an electronic trading environment and a manual trading floor.[5] The Exchange believes that, at present, customers who submit orders to Floor Brokers likely are seeking to rely on a Floor Broker's expertise and discretion.[6] The Exchange believes that customers place orders with Floor Brokers because Floor Brokers can exercise discretion in executing a client's order and can potentially provide

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5 See Notice, supra note 4, 80 FR at 29768.

6 See id.

higher execution quality.[7] The Exchange states that a customer would otherwise electronically submit an order to the Exchange for automatic handling and an electronic execution.[8]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

The Commission believes that the Exchange has articulated a reasonable basis for changing the current default presumption of whether a customer intends to provide a Floor Broker with the ability to exercise time and price discretion on its behalf as long as the order is not otherwise marked, or received electronically, in a manner to suggest that the customer did not intend for its order to be treated as Not Held. Other than changing the default presumption to "Not Held" for most orders sent to Floor Brokers, CBOE is not proposing to change any other order handling obligations applicable to Floor Brokers. CBOE's proposal responds to its understanding of the changing role of Floor Brokers on its trading floor since it adopted

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7 See id.

8 See id.

9 In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

10 15 U.S.C. 78(b)(5).

Rule 6.75, and its understanding of how customers today use, and intend to continue to use, the services of Floor Brokers on the CBOE exchange. Accordingly, the Commission finds that the proposed rule change is consistent with the Act and is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-2015-047) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

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11 17 CFR 200.30-3(a)(12).