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SECURITIES AND EXCHANGE COMMISSION  
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October 21, 2016

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Opening and Closing Rotations Under the HOSS System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 7, 2016, Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules related to the opening of series for trading on the Exchange. The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its rules related to the opening of series for trading on the Exchange. Rule 6.2B describes the process the Exchange’s Hybrid Trading System (the “System”) uses to open series on the Exchange each trading day (referred to as “HOSS”). The Exchange may also use this same process for closing series or opening series after a trading halt. The Exchange proposes to make various changes to this rule to reorganize and simplify the rule as well as make other changes to the opening procedures in order to reflect current System functionality.

Opening (and Sometimes Closing) Procedures

The Exchange proposes to amend Rule 6.2B by reorganizing the provisions of the rule to describe the HOSS procedures in a more sequential manner, clarifying the timing of each stage of the process and enhancing or modifying the description of certain provisions within the rule. HOSS generally processes the opening of each series as follows:

- (1) Pre-Opening Period: During the pre-opening period, the System will accept orders and quotes and disseminate messages that contain information based on resting orders and quotes in the book, which may include the expected opening price (“EOP”), expected opening size (“EOS”), any reason why a series may not open and imbalance information, including the size and side of an imbalance (“expected opening information” or “EOIs”).

- (2) Initiation of the Opening Rotation: At this time, the System initiates the opening rotation procedure and distributes a rotation notice to market participants.
- (3) Opening Rotation Period: During the opening rotation period, the System matches and executes orders and quotes against each other in order to establish an opening Exchange best bid and offer (“BBO”) and trade price for each series while continuing to disseminate expected opening information.
- (4) Opening of Trading: At this time, the System opens series for trading, subject to the satisfaction of certain conditions.

The proposed rule change more clearly organizes the provisions of Rule 6.2B in this order and makes the additional following changes.

#### Pre-Opening Period

Rule 6.2B(a) currently provides that, for regular trading hours, for a period of time before the opening of trading in the underlying security or, in the case of index options, prior to 8:30 a.m.<sup>3</sup>, and for extended trading hours, for a period of time prior to 2:00 a.m. (as determined by the Exchange on a class-by-class basis), the System will accept orders and quotes (the System will not accept certain orders during the pre-opening period, as discussed below). The times specified in the current rule are not the times at which series open for trading, but rather the times at which the System initiates opening rotations, which is described later in the rule (see description of proposed paragraph (b)(i) below). The Exchange proposes to amend Rule 6.2B(a) to provide the pre-opening period begins for each trading session no later than 15 minutes prior to the expected initiation of an opening rotation (the Exchange determines the specific time at

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<sup>3</sup> All times are central time.

which the pre-opening period will begin).<sup>4</sup> The Exchange believes it is repetitive to include a description of the time at which series open in this paragraph. The proposed rule change adds the pre-opening period will begin no earlier than 2:00 a.m. for regular trading hours and no earlier than 4:00 p.m. on the previous day for extended trading hours to provide additional information regarding when the Exchange may begin the pre-opening period. The Exchange believes it is appropriate to have pre-opening periods of different lengths for the different trading sessions in order to accommodate extended trading hours Trading Permit Holders who may want to submit orders for that trading session, for example, after regular trading hours close but prior to the end of the day rather than in the middle of the night. Additionally, the System begins the pre-opening period at the same time for each class within each type of option (equity, index and exchange-traded products (“ETP”)), so the proposed rule change deletes the provision of the rule that says the Exchange will determine the time on a class-by-class basis. The Exchange believes indicating a minimum and maximum time for the pre-opening period provides Trading Permit Holders with more specific information regarding the timeframe of the pre-opening period.

The proposed rule change amends Rule 6.2B(a)(i) by deleting the provision that indicates the Exchange will designate eligible order size, order type and order origin code as order terms for which the Exchange may designate eligibility for submission during the pre-opening period on a class-by-class basis. The Exchange currently does not, and does not intend to, restrict the size or origin code of orders that may be submitted during the pre-opening period, so this provision is no longer necessary. Additionally, the System currently accepts all quotes and all order types during the pre-opening period except for immediate-or-cancel, fill-or-fill, intermarket sweep orders, and Market-Maker trade prevention orders, as acceptance of those order types

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<sup>4</sup> Currently, the pre-opening period begins at approximately 6:30 a.m. for regular trading hours and approximately 4:00 p.m. on the previous day for extended trading hours.

during the pre-opening period would be inconsistent with their terms.<sup>5</sup> The proposed rule change lists these few exceptions in the rule. The proposed rule change also adds if an order entered during the pre-opening period for regular trading hours is not eligible for book entry (including minimum volume, not held and market-if-touched orders), the System routes the order via the order handling system pursuant to Rule 6.12.<sup>6</sup> As discussed below, not all of these orders may participate in the opening rotation.

The proposed rule change proposes to amend Rule 6.2B(a)(ii) in several ways. First, the proposed rule change amends the description of when the System begins disseminating expected opening information. Currently, the rule states, at specified intervals of time determined by the Exchange, the System will disseminate information about resting orders in the book that remain from the prior business day and orders and quote submitted before the opening, which may include the EOP and EOS. The Exchange proposes to revise this provision to state beginning at a time (determined by the Exchange) no earlier than three hours prior to the expected initiation of an opening rotation for a series, the System disseminates EOIs to all market participants that have elected to receive them at regular intervals of time (the length of which is determined by the

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<sup>5</sup> See Rule 6.53 for definitions of these order types. For example, an immediate-or-cancel order is intended to execute immediately once represented on the Exchange or be cancelled. As there is no trading during the pre-opening period, an immediate-or-cancel order submitted during the pre-opening period would never execute and always be cancelled; thus, the Exchange determined to not permit this order type during the pre-opening period. Rule 6.53(l) defines opening rotation orders, and the proposed rule change amends this definition to include limit orders. The Exchange does not believe it is necessary to restrict limit orders from being entered to participate in the opening rotation, as they will execute during the opening rotation pursuant to the opening procedures in the same manner as market orders.

<sup>6</sup> Orders not eligible for book entry may only be traded open outcry on the Exchange floor. Because trading during extended trading hours is electronic only, the System does not accept these order [sic] during that trading session and, thus, this proposed provision is not applicable during that trading session.

Exchange) or less frequently if there are no updates to the opening information since the previously disseminated EOI. This revised rule text clarifies the time at which the System will begin disseminating expected opening information, which may be different (and generally later) than the beginning of the pre-opening period, as the Exchange believes recipients generally want to receive EOIs closer to the opening of trading.<sup>7</sup> Additionally, this proposed rule change indicates EOIs are generally sent out regularly, but if there have been no changes (for example, the EOS and EOP have not changed because there are no new orders or quotes), then the System does not disseminate a duplicate message to users at the next regular interval time.

Second, the proposed rule change also amends Rule 6.2B(a)(ii) to more specifically describe the information regarding the expected opening of a series that the System disseminates. Currently, subparagraph (a)(ii) provides that the System will disseminate information about resting orders in the book that remain from the prior business day and any orders and quotes submitted before the opening, including the expected opening price and size. The Exchange proposes to simplify this provision by stating that the expected opening information will be based on resting orders in the book (which includes orders remaining from the prior trading day and orders entered during the pre-opening period) and quotes submitted prior to the opening of trading. Additionally, in addition to the EOP and EOS, these messages may include additional information based on the circumstances, such as a description of the reason why a series may not or did not open (e.g., no quote or opening trade) and imbalance information, including the size and side of the imbalance (see discussion below regarding opening conditions), which reasons

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<sup>7</sup> Currently, the System begins disseminating EOIs at approximately 7:30 a.m. for SPX and EEM options and approximately 8:00 a.m. for all other options. The System disseminates EOIs at 30-second intervals during the pre-open period and 1-second intervals during the opening rotation period (see discussion below for additional information regarding the dissemination of EOIs during the opening rotation). See Regulatory Circular RG13-061.

are described in current Rule 6.2B(e) and proposed Rule 6.2B(d). The Exchange proposes to add a definition of EOIs, which may include not only the EOP and EOS but also these other types of information. The Exchange proposes to incorporate this definition in other parts of the rule (as further discussed below).

Third, the proposed rule change amends the provision about what the EOP is and when it is calculated. Currently, Rule 6.2B(a)(ii) states that the EOP is the price at which the greatest number of orders and quotes in the book are expected to trade and that an EOP may only be calculated if (a) there are market orders in the book, or the book is crossed or locked and (b) at least one quote is present. The proposed rule change revises this language to state the EOP is the price at which any opening trade is expected to execute. The EOS is the size of any expected opening trade. As further discussed below, the definition of opening price is included in current paragraph (c), so the proposed rule change deletes that definition from paragraph (a)(ii) and only includes the definition in proposed paragraph (c), as the Exchange believes it is less confusing to include the opening price definition in the rules only one time. Additionally, the proposed rule change deletes the language the EOP may only be calculated if there are market orders in the book or the book is crossed. Because the EOP is a price of an expected opening trade, it is only possible to have a trade if there are market orders or a locked or crossed market, so the Exchange believes this language is unnecessary. Further, the proposed rule change states the System will only disseminate EOP and EOS messages: (a) if the width between the highest quote bid and lowest quote offer on the Exchange is no wider than the OEPW range (as defined below), in classes in which the Hybrid Agency Liaison (“HAL”)<sup>8</sup> is not activated for openings; or (b) if the

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<sup>8</sup> HAL provides automated order handling in designated Hybrid classes for electronic orders that are not automatically executed by the System. HAL exposes these orders at the national best bid or offer, and Trading Permit Holders may submit responses to trade

width between the highest quote bid and lowest quote offer on the Exchange or disseminated by other exchanges is no wider than the OEPW range, in classes in which HAL is activated for openings (“HALO”).<sup>9</sup> As discussed below, the Exchange’s opening quote width must be no wider than OEPW range for a series to open, and this revised language is consistent with that opening condition.

#### Opening Rotation Initiation and Notice

Rule 6.2B(b) currently provides, unless unusual circumstances exist, at a randomly selected time within a number of seconds after the opening trade and/or the opening quote is disseminated in the market for the underlying security<sup>10</sup> (or after 8:30 a.m. for index options) with respect to regular trading hours, or after 2:00 a.m. with respect to extended trading hours, the System initiates the opening rotation procedure and sends a notice (“Rotation Notice”) to market participants. It further provides the Rotation Notice will be sent following the opening trade or opening quote or which occurs first (as determined by the Exchange on a class-by-class basis). The Exchange proposes to amend Rule 6.2B(b) to provide in proposed subparagraph (i) that the System initiates the opening rotation procedure on a class-by-class basis<sup>11</sup>:

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with the orders. See Rule 6.14A.

<sup>9</sup> Because this proposed language implies there must be a quote, the proposed rule change also deletes the language that the EOP may only be calculated if at least one quote is present, as it would be duplicative.

<sup>10</sup> The “market for the underlying security” is currently the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months) or the first market to open the underlying security. The Exchange does not designate the primary volume market as the market for the underlying security for any class, and thus the proposed rule change deletes that option. The proposed rule change also changes the term “market” to “exchange,” as the primary listing market or first market to open is a national securities exchange. The proposed rule change clarifies that the Exchange determines on a class-by-class basis which market is the market for the underlying security.

<sup>11</sup> See discussion below regarding the proposed rule change to amend various provisions of

- for regular trading hours:
  - with respect to equity and ETP options, after the opening trade or the opening quote is disseminated in the market for the underlying security, or at 8:30 for classes determined by the Exchange (including over-the-counter equity classes); or
  - with respect to index options, at 8:30 a.m., or at the later of 8:30 a.m. and the time the Exchange receives a disseminated index value for classes determined by the Exchange; and
- for extended trading hours, at 2:00 a.m.

The proposed rule change also deletes the phrase regarding the initiation of the opening rotation procedure at a randomly selected time within a number of seconds after the triggering event.

The Exchange believes this proposed change more accurately describes the timing at which the System initiates the opening rotation procedure for each type of option, which generally occurs immediately after the triggering event rather than a randomly selected number of seconds after the event. The proposed rule change provides, while the dissemination of the opening trade or quote in the market for the underlying security is generally the trigger to initiate the opening rotation for an equity or ETP class, the Exchange may determine to open certain equity and ETP classes at 8:30 a.m. instead if it does not have access to underlying information for those classes. The Exchange does not receive underlying information regarding the opening of certain equities.<sup>12</sup> The proposed rule change provides the Exchange with the necessary

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Rule 6.2B to allow the Exchange to make determinations on a series-by-series basis rather than class-by-class basis.

<sup>12</sup> For example, with respect to pink sheet stocks, the Exchange does not receive underlying information from the over-the-counter market (“OTC”) and believes it is in the interest of

flexibility to ensure it can open trading in options overlying these equities in such circumstances. Similarly, the proposed rule change provides the Exchange with flexibility to open certain index options at the later of 8:30 a.m. and the time the Exchange receives a disseminated index value, in addition to at 8:30 a.m., to address circumstances in which this may be a more useful opening trigger.

In addition, the Exchange proposes to amend current Rule 6.2B(b)(i), which is proposed Rule 6.2B(b)(ii), to state the System notifies market participants of the opening rotation initiation upon initiating the opening rotation procedure (defined as the “Rotation Notice”) rather than following the opening trade or quote. The initiation of the opening rotation for a series triggers the dissemination of the notice, so the Exchange believes this proposed change more accurately and simply describes when market participants will receive the rotation notice.

#### Opening Rotation Period

Current Rule 6.2B(c) provides after the rotation notice is sent, the System will enter into a rotation period, during which the opening price will be established for each series. During the rotation period, the System will continue to calculate and provide the EOP and EOS given the current resting orders and quotes. The System will process the series of a class in a random order, and the series will begin opening after a period following the rotation notice, which period will not exceed 60 seconds and will be established on a class-by-class basis.

The proposed rule change reorganizes paragraph (c) to describe when the opening rotation period begins (which is after the System initiates the opening rotation procedure and sends the rotation notice) (proposed subparagraph (c)), what happens during the period (proposed subparagraph (c)(i)), the handling of EOIs during the period (proposed subparagraph

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a fair and orderly market to initiate the opening rotation at 8:30 for those stocks rather than take additional time to confirm the OTC market for those stocks opened.

(c)(ii)), and when the period ends (proposed subparagraph (c)(iii)). The Exchange believes this will more clearly describe for investors the opening rotation process.

The proposed rule change adds detail regarding what occurs during the opening rotation period. Specifically, while the rules currently state the System establishes the opening trade price for a series during the opening rotation period, the proposed rule change adds proposed subparagraph (c)(i), which states the System does this (as well as establish the opening BBO) by matching and executing resting orders and quotes against each other. The proposed rule change moves the definition of opening trade price to proposed subparagraph (c)(i)(A) from current subparagraph (c)(iv) so the rules include discussions of the opening trade price in a single location within the rules. The proposed rule change amends the definition of the opening trade price of a series to be the “market-clearing” price, which is the single price at which the largest number of contracts in the book can execute, leaving bids and offers that cannot trade with each other. The Exchange believes it is more appropriate to clear the largest size from the book at the open, even if that size is comprised of a smaller number of orders and quotes (as stated in Rule 6.2B(a)(ii)). The EOS is the size of any expected opening trade. This is consistent with the change to the definition of EOP, as discussed above. The proposed rule change adds if there are multiple prices at which the same number of contracts would clear, the System uses (a) the price at or nearest to the midpoint of the opening BBO, or the widest offer (bid) point of the OEPW range if the midpoint is higher (lower) than that price point, in classes in which the Exchange has not activated HALO; or (b) the price at or nearest to the midpoint of the range consisting of the higher of the opening NBB and widest bid point of the OEPW range, and the lower of the opening NBO and widest offer point of the OEPW range, in classes in which the Exchange has activated HALO.

The proposed rule change also adds proposed paragraph (c)(i)(B), which states all orders (except complex orders and, in classes in which the Exchange has not activated HALO, all-or-none orders and orders with a stop contingency) and quotes in a series in the book prior to the opening rotation period participate in the opening rotation for a series. Contingency orders that participate in the opening rotation may execute during the opening rotation period only if their contingencies are triggered. The proposed rule change also notes complex orders do not participate in the opening rotation. While the System accepts those orders prior to the open, the Exchange believes it would complicate the opening rotation if they participated in the opening rotation and attempted to execute against the leg markets. Similarly, the Exchange determined to not have all-or-none orders and orders with a stop contingency participate in the opening rotation in classes in which the Exchange has not activated HALO, so the proposed rule change codifies this in the Rules. Because proposed subparagraph (c)(i)(B) describes the matching process that occurs during the opening rotation period, the proposed rule change moves the rule provision regarding the priority order of orders and quotes during this matching process from current subparagraph (c)(iv) to proposed subparagraph (c)(i)(C).<sup>13</sup>

The proposed rule change also revises the language regarding the messages disseminated during the opening rotation period to provide the System will continue to disseminate EOIs (not just the EOP and EOS). This proposed revision is consistent with the proposed language described above regarding dissemination of EOIs during the pre-opening period (and incorporates the proposed definition of EOIs). The proposed rule change provides the Exchange with the authority to determine a shorter interval length for the dissemination of EOIs during the

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<sup>13</sup> The System prioritizes orders in the following order: (1) market orders, (2) limit orders and quotes whose prices are better than the opening price, and (3) resting orders and quotes at the opening price. The proposed rule change also notes contingency orders are prioritized as set forth in Rules 6.45A and 6.45B.

opening rotation period than during the pre-opening period, as the Exchange believes market participants may want to receive these messages more frequently closer to the opening. This flexibility is intended to ensure the Exchange may disseminate these messages to market participants as frequently as it deems necessary to ensure a fair and orderly opening.

Proposed subparagraph (c)(iii) updates the description of the length of the opening rotation period and how the System processes series to open following the opening rotation period. Current subparagraph (c)(ii) states the System will process the series of a class in a random order and the series will begin opening after a period following the Rotation Notice, which period may not exceed sixty seconds and will be established on a class-by-class basis by the Exchange. Proposed subparagraph (c)(iii) states after a period of time determined by the Exchange for all classes, the System opens series of a class in a random order, staggered over regular intervals of time (the Exchange determines the length and number of these intervals for all classes).<sup>14</sup> Subject to satisfaction of opening conditions described below (in proposed paragraph (d)), the opening rotation period (including these intervals) may not exceed 60 seconds. The Exchange believes this change more clearly and accurately describes how the System opens series for trading, which it does randomly as set forth in the current rule but in a staggered manner over regular intervals. These intervals are intended to manage the number of series that will open during a short time period to ensure a fair and orderly opening.

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<sup>14</sup> Currently, the Exchange has set the period of time that must pass before the System begins processing series to open at two seconds, and the Exchange has set the number of intervals to two and the length of the intervals to one second. As a result, the opening rotation period currently lasts two to four seconds (the proposed rule change clarifies that the various time periods and intervals combine to form the opening rotation period). See Regulatory Circular RG11-072. In other words, after two seconds, the System randomly selects a group of series to open; after the first one-second interval passes, the System randomly selects another group of series to open; and after the second one-second interval, the System opens the remaining group of series.

The proposed rule change also deletes current subparagraph (c)(iii), which states prior the expiration of the opening rotation period, the System will not open a series unless opening quotes that comply with the bid/ask differential requirements have been entered by at least one Market-Maker. Current paragraph (e) (and proposed paragraph (d)) describes conditions that must be satisfied for a series to open, including the required quotes, so the Exchange believes this provision is duplicative.<sup>15</sup>

#### Opening Quote and Trade Price

The proposed rule change deletes the language in current paragraph (d) stating as the opening price is determined by series, the System will disseminate through OPRA the opening quote and the opening trade price, if any. The System disseminates all quote and trade price information to OPRA once a series opens pursuant to the OPRA plan, including opening quote and trade price information, so the Exchange believes it is unnecessary to include this provision specifically in the opening rule.

#### Opening Conditions

Current Rule 6.2(e) provides that the System will not open a series if one of the following conditions is met:

- (1) there is no quote present in the series that complies with the bid/ask differential requirements (as determined by the Exchange on a class-by-class basis) that has been entered by at least one Market-Maker appointed to the class (or by the DPM or LMM, as determined by the Exchange on a class-by-class basis);

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<sup>15</sup> As further discussed below, while Market-Makers' quotes (including opening quotes) must all be within Exchange-set bid/ask differentials pursuant to Rule 8.7, whether a series opens is based on whether the opening quote width is no wider than the OEPW range and not bid/ask differentials.

- (2) the opening price is not within an acceptable range (as determined by the Exchange) compared to the lowest quote offer and the highest quote bid; or
- (3) the opening trade would leave a market order imbalance (i.e. there are more market orders to buy or to sell for the particular series than can be satisfied by the limit order, quotes and market orders on the opposite side); however, in series that will open at a minimum price increment, the System will open the series even if a sell market order imbalance exists.

The proposed rule change amends these conditions to provide that, notwithstanding proposed paragraph (c),<sup>16</sup> in classes in which the Exchange has not activated HALO:

- (1) if there are no quotes in the series on the Exchange, the System does not open the series. There are no exceptions to this opening condition. The Exchange generally requires an opening quote to ensure there will be liquidity in a series when it opens;
- (2) if the width between the Exchange's best quote bid and best quote offer (for purposes of subparagraph (d)(i), the "opening quote")<sup>17</sup> is wider than an acceptable

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<sup>16</sup> The final provision of current paragraph (e) provides the following: if the first or second condition is present, the senior official in the Control Room may authorize the opening of the affected series where necessary to ensure a fair and orderly market; if the second condition is present, the System will not open the series but will send a notification to market participants indicating the reason; if the third condition is present, a notification will be sent to market participants indicating the size and direction of the market order imbalance. It further provides that the System will not open the series until the condition causing the delay is satisfied, and the System will repeat this process until the series is open. The proposed rule change combines the exceptions in current paragraph (e) with the applicable opening conditions in current subparagraphs (e)(i) through (iii) into proposed paragraph (d)(i) for ease of review.

<sup>17</sup> The term opening quote is used throughout the subparagraph, so the Exchange believes it is beneficial to clarify in the rules what this term means in the various places it is used. Additionally, as discussed below, the term opening quote has a different meaning for classes in which the Exchange has not activated HALO and classes in which it has activated HALO, so this proposed change reflects this distinction.

opening price range (as determined by the Exchange on a class-by-class and premium basis) (the “Opening Exchange Prescribed Width range” or “OEPW range”)<sup>18</sup> and there are orders or quotes marketable against each other, the System does not open the series. However, if the opening quote width is no wider than the intraday acceptable price range for the series (“IEPW range”)<sup>19</sup> and there are no orders or quotes marketable against each other, the System opens the series. If the opening quote width is wider than the IEPW range, the System does not open the series. The Exchange uses the OEPW range as a price protection measure to prevent orders from executing at extreme prices on the open. However, if there are no marketable orders, but the quote width would satisfy the price check parameter the Exchange uses for intraday trading, then there is no risk that an order will execute at an extreme price on the open. Because the risk that the OEPW range is intended to address is not present in that situation, the Exchange believes it is appropriate to open a series in that situation. If the opening quote width is wider than IEPW, then the System does not open the series, as executions at prices outside that range are not permitted by the above-referenced rule. The proposed rule change deletes the language regarding the ability of the senior official in the control room to authorize the opening of the affected series where necessary to ensure a fair and orderly market, as this is duplicative of current and proposed paragraph (e) (as discussed below). Proposed

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<sup>18</sup> Current OEPW settings are set forth in Regulatory Circular RG 13-025. The acceptable price range is determined by taking the midpoint of the highest quote bid and lowest quote offer plus/minus half of the designated OEPW. The rules currently permit CBOE to set the OEPW on a class-by-class basis. The proposed rule change also clarifies that the Exchange may set the OEPW on a premium basis; as options with higher premiums may have wider spreads, the Exchange believes it is appropriate to have OEPW settings to reflect that. This is consistent with the Exchange’s authority to set the IEPW pursuant to Rule 6.13(b)(v).

<sup>19</sup> See Rule 6.13(b)(v).

paragraph (e) provides the Exchange with the authority to open an affected series that does not open for any reason, not just due to lack of a quote, to ensure a fair and orderly market. Additionally, all quotes entered by Market-Makers (including quotes entered during the pre-opening period and opening rotation period) must satisfy bid/ask differentials,<sup>20</sup> so the Exchange does not believe Rule 6.2B needs to include this requirement as well and thus deletes it from current subparagraph (c)(iii) (as discussed above). With respect to openings, the System looks to determine whether the opening quote width (whether the opening quote consists of a bid and offer from one Market-Maker or multiple Market-Makers<sup>21</sup>) is within the OEPW range (or IEPW range if there are no orders against each other), which the Exchange uses as a price protection measure, rather than within the bid/ask differentials.<sup>22</sup> The Exchange generally requires an opening quote to ensure there will be liquidity in a series when it opens;

(3) if the opening trade price would be outside of the OEPW range, the System does not open the series. As discussed above, the Exchange believes using the term OEPW

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<sup>20</sup> See Rule 8.7(d). The Exchange may set different bid/ask differential requirements for a Market-Maker's opening quotes than for its intraday quotes (which it currently does). The proposed rule change specifies this in Interpretation and Policy .02 regarding Market-Maker quotes, which currently provides that the Exchange may also set a different minimum number of contracts for a Market-Maker's opening quotes. Because trading conditions at the open are generally different than intraday, the Exchange believes it is appropriate to have the flexibility to set different quoting restrictions for the opening to address these trading conditions.

<sup>21</sup> The term Market-Maker includes Designated Primary Market-Maker ("DPM") or Lead Market-Maker ("LMM"), as applicable appointed to the class, and thus the proposed rule change only uses the term Market-Maker when referring to all types of Market-Makers. The proposed rule change deletes this language from Interpretation and Policy .02, as it is unnecessary.

<sup>22</sup> Regulatory Circular RG13-025 sets forth the current OEPW range and how to calculate the range. This is the term with which Trading Permit Holders are familiar for the acceptable opening price range, as it is the term regularly used in circulars, and the Exchange believes it will be beneficial for investors if the rules refer to the same term.

range with respect to the acceptable range for opening price in the rules is a more accurate description of the appropriate range for opening prices (as this is the term used in circulars and among Trading Permit Holders). As indicated in the previous paragraph, the OEPW range is used as a price protection measure. There are no exceptions to this opening condition in order to prevent executions at extreme prices on the open.

Additionally, the proposed rule change clarifies that a series will open if the opening trade price is at the widest part of OEPW range (it will only not open if it is outside OEPW range); or

(4) if the opening trade would leave a market order imbalance, which means there are more market orders to buy or to sell for the particular series than can be satisfied by the orders and quotes on the opposite side, the System does not open the series. However, if a sell market order imbalance exists, there is no bid in the series and the best offer is \$0.50 or less, the System opens the series; if there is no bid in the series and the best offer is greater than \$0.50, the System does not open the series. The proposed rule change deletes the language regarding the exception for series that will open at a minimum increment and revises this exception to use language consistent with the existing rule regarding the treatment of no-bid series. Pursuant to Rule 6.13(b)(vi), in the situation in which there is no bid in the series and the best offer is \$0.50 or less, the System considers these market orders to be limit orders for the minimum increment applicable to the series and enter these orders in the book (behind limit orders to sell at the minimum increment already resting in the book). Essentially, this creates a situation in which a series opens at a minimum price increment (i.e. \$0.00 – \$0.05). In the situation in which there is no bid in the series and the best offer is greater than \$0.50, if the no-bid series were to open

while the best offer is greater than \$0.50, under the rules, a market order to sell will be handled via the order handling system pursuant to Rule 6.12 rather than route to the book. The Exchange believes it is appropriate to delay opening the series until the best offer is less than or equal to \$0.50 so that the market order can be placed in the book and more likely to get an execution. The proposed rule change deletes the language from the current provision regarding sending a notification when this condition is present, as notifications go out when a series does not open for any reason, as discussed below. This concept is included in proposed subparagraph (d)(iii).

Current Interpretation and Policy .03 describes opening conditions that apply to classes in which the Exchange has activated HALO. To keep the description of opening conditions for all classes in a single location within the rules, the proposed rule change moves these opening conditions to proposed subparagraph (d)(ii). Current Interpretation and Policy .03(a) provides that the System will not open a series if one of the following conditions is met:

- (1) there is no quote present in the series that complies with the bid/ask differential requirements (as determined by the Exchange on a class-by-class basis) have been entered by at least one Market-Maker appointed to the class (or by the DPM or LMM, as determined by the Exchange on a class-by-class basis);
- (2) the opening price is not within an acceptable range (as determined by the Exchange) compared to the lowest quote offer and the highest quote bid;
- (3) the opening trade would be at a price that is not the national best bid or offer; or
- (4) the opening trade would leave a market order imbalance (i.e., there are more market orders to buy or to sell for the particular series than can be satisfied by the limit order, quotes and market orders on the opposite side).

Paragraph (b) describes what happens when each of these conditions is present:

(1) If the condition in paragraph (a)(i) is present (i.e., there is no quote), the System will check to see if there is an NBBO quote on another market that falls within the acceptable opening range. If such an NBBO quote is present, the series will open and expose the marketable order(s) at the NBBO price. If such an NBBO quote is not present, the System will not open the series and will send a notification to market participants indicating the reason.

(2) If the condition in paragraph (a)(ii) is present (i.e., the opening price is not within an acceptable range), the System will match orders and quotes to the extent possible and report the opening trade, if any, at a single clearing price within the acceptable range, then expose the remaining marketable order(s) at the widest price point within the acceptable opening range or the NBBO price, whichever is better.

(3) If the condition in paragraph (a)(iii) is present (i.e., the opening trade would not be at the NBBO), the System will match orders and quotes to the extent possible and report the opening trade, if any, at a single clearing price within the acceptable opening range or the NBBO price, whichever is better, then expose the remaining marketable order(s) at the NBBO price.

(4) If the condition in paragraph (a)(iv) is present (i.e., the opening trade would leave market order imbalance), the System will match orders and quotes to the extent possible and report the opening trade, if any, at a single clearing price, then expose the remaining marketable order(s) at the widest price point within the acceptable opening range or the NBBO price, whichever is better.

The proposed rule change amends the opening conditions to provide in proposed paragraph (d)(ii) as follows<sup>23</sup>:

- (1) If there are no quotes on the Exchange or disseminated from at least one away exchange present in the series, the System does not open the series. There are no exceptions to this opening condition. The Exchange generally requires an opening quote to ensure there will be liquidity in a series when it opens;
- (2) if the width between the best quote bid and best quote offer, which may consist of Market-Makers quotes or bids and offers disseminated from an away exchange (for purposes of proposed subparagraph (d)(ii), the “opening quote”), is wider than the OEPW range and there are orders or quotes marketable against each other or that lock or cross the OEPW range, the System does not open the series. However, if the opening quote width is no wider than the IEPW range and there are no orders or quotes marketable against each other or that lock or cross the OEPW range, the System opens the series. If the opening quote width is wider than the IEPW range, the System does not open the series. If the opening quote for a series consists solely of bids and offers disseminated from an away exchange(s), the System opens the series by matching orders and quotes to the extent they can trade and reports the opening trade, if any, at the opening trade price. The System then exposes any remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is lower (higher). The proposed rule change only makes nonsubstantive, simplifying changes to the exception to this opening condition. Because the proposed definition of opening quote width includes

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<sup>23</sup> Similar to proposed paragraph (d)(i) above, the proposed rule change combines the exceptions in current Interpretation and Policy .03(b) with the applicable opening conditions in current Interpretation and Policy .03(a) into single proposed subparagraph (d)(ii) for ease of review.

bids and offers from away exchanges, opening quote width incorporates those bids and offers. If there are no Market-Maker quotes on CBOE but other exchanges have disseminated bids and offers in a series, those away quotes constitute the NBBO for the series. Thus, the proposed rule change clarifies that the System will open a series if the opening quote width, which is comprised of the best quotes on CBOE and other exchanges (essentially, the NBBO) is no wider than the OEPW range. As discussed above, the OEPW range is a price protection measure intended to prevent orders from executing at extreme prices on the open. If that market is no wider than the OEPW range, the Exchange believes it is appropriate to open a series under these circumstances and provide marketable orders on the Exchange with the opportunity to execute at the NBBO. If the opening quote width is no wider than the OEPW range, then the Exchange believes the risk of execution at an extreme risk is not present. With respect to the exception to this opening condition, similar to the exception in proposed Rule 6.2B(d)(i)(B), if the best market (whether the Exchange or national market) would satisfy the price check parameter the Exchange uses for intraday trading, and there are no orders that can execute on the open, then there is no risk that an order will execute at an extreme price on the open. Because the risk that the OEPW range is intended to address is not present in this situation, the Exchange believes it is appropriate to open a series given these conditions. Other proposed changes make the language (e.g., language regarding matching orders and quotes and reporting the opening trade, and regarding the opening price being that which clears the largest number of contracts) in this paragraph consistent with language used in the other opening conditions and exceptions in proposed subparagraphs (d)(i) and (ii). Additionally, as discussed above, all quotes entered by

Market-Makers (including quotes entered during the pre-opening period and opening rotation period) must satisfy bid/ask differentials,<sup>24</sup> so the Exchange does not believe the Rule 6.2B needs to include this requirement as well. With respect to openings, the System looks to determine whether the opening quote width (whether the opening quote consists of a bid and offer from one Market-Maker, multiple Market-Makers or quotes disseminated from away exchanges) is within the OEPW range, which the Exchange uses as a price protection measure, rather than within the bid/ask differentials.<sup>25</sup>

(3) if the opening trade price would be outside the OEPW range or the NBBO, the System opens the series by matching orders and quotes to the extent they can trade and reports the opening trade, if any, at an opening trade price not outside either the OEPW range or NBBO. The System then exposes any remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is lower (higher). As discussed above, the Exchange believes using the term OEPW range with respect to the acceptable range for opening price in the rules is a more accurate description of the appropriate range for opening prices (as this is the term used in circulars and among Trading Permit Holders). The OEPW range is used as a price protection measure. Additionally, the proposed rule change clarifies that a series will open if the opening trade price is at the widest part of the OEPW range (it will expose

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<sup>24</sup> See Rule 8.7(d). The Exchange may set different bid/ask differential requirements for a Market-Maker's opening quotes than for its intraday quotes (which it currently does). The proposed rule change specifies this in Interpretation and Policy .02 regarding Market-Maker quotes, which currently provides the Exchange may also set a different minimum number of contracts for a Market-Maker's opening quotes.

<sup>25</sup> Regulatory Circular RG13-025 sets forth the current OEPW range. This is the term with which Trading Permit Holders are familiar for the acceptable opening, and the Exchange believes it will be beneficial for investors if the rules refer to the same term.

orders if it is outside the OEPW range). The proposed rule change makes nonsubstantive, simplifying changes to this opening condition and clarifies that the opening trade price must be something not outside the OEPW range or the NBBO (including the ends of the applicable range). Other proposed changes make the language in this paragraph consistent with language used in the other conditions in proposed subparagraphs (d)(i) and (ii);

(4) if the opening trade would leave a market order imbalance, which means there are more market orders to buy or to sell for the particular series than can be satisfied by the orders and quotes on the opposite side, the System opens the series by matching orders and quotes to the extent they can trade and reports the opening trade, if any, at the opening trade price. The System then exposes any remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is lower (higher). The proposed rule change makes nonsubstantive, simplifying changes to this provision. Other proposed changes make the language in this paragraph consistent with language used in the other conditions in proposed subparagraphs (d)(i) and (ii); or

(5) if the opening quote bid (offer) or the NBB (NBO) crosses the opening quote offer (bid) or the NBO (NBB) by more than an amount determined by the Exchange on a class-by-class and premium basis, the System does not open the series.<sup>26</sup> The System currently does not open a series if this condition exists to prevent executions at extreme prices, and the Exchange proposes to codify this condition in the rules so that market participants are aware of all circumstances under which a series may not open. There are no exceptions to this opening condition. If the opening quote bid (offer) or NBO (NBO)

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<sup>26</sup> Currently, this amount is \$0.25 for options with prices less than \$3.00 and \$0.50 for options with prices of \$3.00 or more.

crosses the opening quote offer (bid) or NBO (NBB) by no more than the specified amount, the System will open the series by matching orders and quotes to the extent they can trade and report the opening trade, if any, at the opening trade price. The System then exposes any remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is lower (higher). If the best away market bid and offer are inverted by no more than the specified amount, there is a marketable order on each side of the series, and the System opens the series, the System will expose the order on the side with the larger size and route for execution the order on the side with the smaller size to an away exchange that is at the NBBO. Only one order in a series may be exposed in a HAL auction, so this provision is consistent with this limitation and is intended to address the situation in which there may be a marketable order on each side of the market so that both orders have a possibility for execution. This exception is consistent with the other exceptions in proposed paragraph (b) as well as with current System functionality.

Generally, the purpose of these opening conditions and exceptions is to ensure that series open in a fair and orderly manner and at prices consistent with the current market conditions for the series and not at extreme prices, while taking into consideration the markets of other exchanges that may be better than the Exchange's at the open. With respect to classes in which the Exchange has activated HAL for openings, the exceptions provide the opportunity for orders to execute through a HAL auction or at an away exchange when that is the case.

Current Interpretation and Policy .03 states for classes for which HALO is activated, the procedures in Interpretation and Policy .03 will apply in lieu of current paragraph (e) (and proposed subparagraph (d)(i)) regarding opening conditions (see above discussion). The

proposed rule change adds subparagraph (d)(ii) to specify the opening conditions in that subparagraph apply to those classes. The proposed rule change deletes the provision regarding the allocation period of the HAL openings. The Exchange no longer uses an allocation period and just uses the exposure period, which may not exceed 1.5 seconds. There is no allocation period for the HAL exposure process described in Rule 6.14A, and the Exchange does not believe it is necessary to include one for HAL on the openings. As provided in current Interpretation and Policy .03(c)(ii) and proposed subparagraph (d)(ii), the exposure process will be conducted via HAL pursuant to Rule 6.14A for an exposure period designated by the Exchange for a class (which period of time will not exceed 1.5 seconds),<sup>27</sup> so the Exchange believes the process for HAL on the openings should be consistent with the standard HAL process. The proposed rule change deletes Interpretation and Policy .03(c)(i) regarding the priority of orders and quotes during the open for classes in which the Exchange has activated HAL for openings, as it is the same as the priority in proposed subparagraph (c)(i)(C).

The Exchange also proposes to add subparagraph (d)(iii), which provides if the System does not open a series pursuant subparagraphs (i) or (ii), notwithstanding proposed paragraph (c) (which states the opening rotation period may not last more than 60 seconds), the opening rotation period continues (including the dissemination of EOIs, which is consistent with language the Exchange proposes to delete regarding the notifications sent to market participants if one of the opening conditions is present) until the condition causing the delay is satisfied or the

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<sup>27</sup> The proposed rule change adds to this provision any remaining balances of orders not executed after the exposure period will enter the book at their limit prices (to the extent consistent with Rule 6.53) or route via the order handling system pursuant to Rule 6.12 in accordance with their routing instructions. The Exchange believes this is implied by the routing parameters and handling instructions of orders and is merely adding detail to the rules, which current Interpretation and Policy .03(c)(ii) and proposed subparagraph (d)(ii) only specify what happens to orders that are priced or would be executed “too far” from the initial HAL price.

Exchange otherwise determines it is necessary to open a series in accordance with proposed paragraph (e). This is currently how the System operates, and the Exchange believes it will benefit investors to explicitly state this in the rules, particularly because, under these circumstances, the opening rotation period will last longer than the standard length of time determined by the Exchange. The Exchange believes it is important for market participants to continue to receive EOIs, particularly those describing why a series is not open, so they have close to real-time information regarding the potential opening of a series.<sup>28</sup>

### Hybrid 3.0 Classes

The proposed rule change moves Rule 6.2B, Interpretation and Policy .01(a), which contains provisions related to the opening applicable to classes that trade on the Hybrid 3.0 platform, to proposed paragraph (h) of Rule 6.2B. Interpretation and Policy .01 generally describes the modified opening procedures for Hybrid 3.0 series that are used to calculate volatility indexes. Current paragraph (a), however, applies to Hybrid 3.0 classes on all trading days, not just the days on which the Exchange uses the modified opening procedures. The proposed rule change moves this provision to proposed paragraph (h) within the body of the rule, rather than the Interpretation and Policy, to clarify this point.

The introduction to proposed paragraph (h) explicitly states all the provisions set forth in Rule 6.2B apply to the opening of Hybrid 3.0 series except as set forth in proposed paragraph

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<sup>28</sup> Current Rule 6.2B(h) and proposed Rule 6.2B(g) provides the opening procedures described in the rule may also be used after the close of a trading session for series that open pursuant to HOSS. The proposed rule change makes nonsubstantive changes to proposed paragraph (g) to more clearly and simply state the potential applicability of the opening procedures to a closing rotation for series that open pursuant to HOSS and to include additional detail regarding the notification to Trading Permit Holders regarding the decision to conduct a closing rotation. The proposed rule change also amends the name of Rule 6.2B to indicate that the procedures may also be used for closing rotations.

(i).<sup>29</sup> The primary difference between the opening procedures for Hybrid series and the opening procedures for Hybrid 3.0 series is in Hybrid classes, all Market-Makers with appointments may submit quotes prior to the open in, while in Hybrid 3.0 classes, only DPMs or LMMs with appointments may submit quotes prior to the open. Proposed paragraph (h)(i) provides, notwithstanding proposed subparagraph (a)(i) (which provides the System accepts all orders during the pre-opening period), only the LMM or DPM with an appointment or allocation, respectively, to the class or series may enter quotes prior to the opening of trading, subject to the obligation set forth in Rule 8.15 or 8.85, respectively.<sup>30</sup> This more clearly states which participants are permitted to submit opening quotes in Hybrid 3.0 classes (Market-Makers other than LMMs and DPMs are not). Proposed paragraph (h)(ii) merely states all market participants may enter orders into the book prior to the opening (consistent with current paragraph (a) in Interpretation and Policy .01). However, the proposed rule change adds, consistent with the current practice in Hybrid 3.0 classes that only public customer orders may rest in the book,<sup>31</sup> the System only accepts opening rotation orders from non-public customers during the pre-opening period. The System accepts all order types designated as eligible for entry during the pre-opening rotation as set forth in proposed paragraph (a)(i) (as discussed above) from public customers during the pre-opening rotation.

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<sup>29</sup> Interpretation and Policy .01 currently provides the provisions in that Interpretation and Policy apply for purposes of Hybrid 3.0 classes, notwithstanding Rule 6.2B(a). The intent of this language is the same as the revised rule language; however, the Exchange believes the rule as revised more directly states this intent.

<sup>30</sup> Currently, LMMs and DPMs must enter opening quotes within one minute of the initiation of an opening rotation in any series that is not open due to the lack of a quote.

<sup>31</sup> Pursuant to Rule 7.4(a), public customer orders are eligible for entry into the electronic book. While non-public customers may submit orders in Hybrid classes for entry into the book, the Exchange may determine on a class-by-class basis that non-public customers may also submit orders in Hybrid 3.0 classes for entry into the book; currently, the Exchange has determined not to permit this.

## Modified Opening Procedures on Volatility Index Settlement Dates

The proposed rule change amends the modified opening procedures for classes and series used to calculate volatility indexes on the exercise and final settlement dates for those indexes. Current Interpretation and Policy .01(b) requires the DPM or LMM to enter opening quotes in all series in a Hybrid 3.0 class on during a modified opening procedure (as it does not specify any subset of series to which the obligation applies). The proposed rule change deletes this obligation. As a result, the opening quoting obligations in Rules 8.15 and 8.85, as applicable, would apply to LMMs and DPMs, respectively, in Hybrid 3.0 classes on volatility settlement days.<sup>32</sup> While this is a slight reduction in the quoting obligation of LMMs and DPMs on volatility settlement days, the purpose of the obligation relates to liquidity in the series for purposes of calculating the exercise/final settlement value of the volatility index for expiring options and (security) futures contracts (“constituent series”). The Exchange believes the standard opening quoting obligation, in addition to other general obligations applicable to LMMs and DPMs,<sup>33</sup> provides sufficient liquidity in these series on the volatility settlement days and thus does not believe it is necessary to impose additional opening quoting obligations on LMMs and DPMs on those days.

Current Rule 6.2B, Interpretation and Policy .01(c) describes a modified opening procedure that applies to series in Hybrid 3.0 classes that are used to calculate a volatility index

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<sup>32</sup> See supra note 30.

<sup>33</sup> See Rules 8.15 and 8.85. For example, LMMs and DPMs must make competitive markets, and LMMs in Hybrid 3.0 classes (currently, only LMMs are appointed in the only class authorized to trade on the Hybrid 3.0 platform, and thus only those LMMs are subject to the obligation proposed to be deleted), must facilitate order imbalances. Additionally, all Market-Makers (including LMMs and DPMs) must submit a quote if called upon by an Exchange official if necessary in the interest of maintaining a fair and orderly market. See Rule 8.7(d)(iv).

on expiration and final settlement dates for those indexes.<sup>34</sup> The introductory paragraph of current paragraph (c) states to facilitate the calculation of exercise or final settlement values for options or futures contracts on volatility indexes, the Exchange will utilize a modified HOSS opening procedure for any Hybrid 3.0 series with respect to which a volatility index is calculated. This modified opening procedure will be utilized only on the expiration and final settlement dates of the options or futures contracts on the applicable volatility index for each expiration. The proposed introductory paragraph to Interpretation and Policy .01 simplifies these two sentences, which are redundant, and states on the dates on which the exercise and final settlement values are calculated for options<sup>35</sup> or (security) futures contracts on a volatility index (i.e., expiration and final settlement dates), the Exchange will utilize the modified opening procedure described in that Interpretation and Policy for all series used to calculate the exercise/final settlement value of the volatility index for expiring options and (security) futures contracts (i.e., constituent options).

The introduction to current paragraph (c) continues to state on settlement dates, public customers, broker-dealers, Exchange Market-Makers, away market-makers and specialists may enter orders in any index options series used to calculate the exercise settlement or final settlement value of that volatility index. As discussed above, proposed Rule 6.2B(a) provides

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<sup>34</sup> Interpretation and Policy .08 has a substantially similar procedure for series in Hybrid classes that are used to calculate volatility indexes on settlement dates. As discussed below, the proposed rule change deletes Interpretation and Policy .08 and applies Interpretation and Policy .01 to all classes. All proposed changes to Interpretation and Policy .01 described in this section of the rule filing will thus apply to the modified opening procedure for both Hybrid and Hybrid 3.0 classes.

<sup>35</sup> The proposed rule references Rules 24.9(a)(5) and (6) (which references are included in current Rule 6.2B, Interpretation and Policy .08), which describe the method of determining the day on which the exercise settlement value will be calculated for volatility indexes with a 30-day volatility period and VXST, respectively.

market participants may submit orders prior to the open. The group of market participants listed in current Interpretation and Policy .01(c) generally covers all market participants, so it is unnecessary to list them out. Additionally, proposed Rule 6.2B(a) applies to expiration and final settlement dates unless otherwise set forth in Interpretation and Policy .01; however, the current provision about entering orders on settlement dates is consistent with proposed Rule 6.2B(a). Therefore, the proposed rule change deletes that provision, as it is duplicative and unnecessary.

Current Interpretation and Policy .01(c)(i) states all orders (including public customer, broker-dealer, Market-Maker, away market-maker and specialist orders), other than spread or contingency orders, will be eligible to be placed on the electronic book for those option contract expirations whose prices are used to derive the volatility indexes on which options and futures are traded, for the purpose of permitting those orders to participate in the opening price calculation for the applicable series. The Exchange permits the same order types during the modified opening procedure as it does during the standard procedure (as set forth in proposed paragraph (a)(i) and, with respect to Hybrid 3.0 classes, proposed paragraph (h)(ii)). Therefore, the proposed rule change deletes this paragraph.

Current subparagraph (c)(ii) provides, in addition to the LMM quoting requirement, all LMMs in Hybrid 3.0 classes, if applicable, must enter opening orders during the modified opening procedures on settlement dates. The Exchange does not require LMMs (or any Market-Makers) to enter orders on settlement dates (or any trading days), and instead imposes a quoting obligation. Thus, the Exchange proposes to delete the requirement for LMMs to submit orders on exercise and final settlement dates. Market-Makers are permitted, but not required, to enter orders in addition to quotes. The Exchange requires, and will continue to require, LMMs (or DPMs) in Hybrid 3.0 classes to enter opening quotes in series that may be used to calculate the

exercise and final settlement values of options or futures on the volatility index on expiration and final settlement dates. Additionally, LMMs and DPMs must enter quotes within a certain timeframe as necessary on all trading days.<sup>36</sup> The Exchange believes that opening quoting obligation will ensure LMMs and DPMs will continue to enter opening quotes and provide sufficient liquidity at the open in all necessary series on settlement dates.

The proposed rule change also makes nonsubstantive changes to Interpretation and Policy .01, including changes to delete unnecessary language, update cross-references and paragraph numbering and lettering, and incorporate defined terms.

#### Obsolete and Duplicate Language

The proposed rule change deletes obsolete and duplicate language in Rule 6.2B as follows:

- Current Rule 6.2B(b)(ii) describes how a DPM or LMM, as applicable takes part in determining the cause of a delay in the opening of an underlying security, and the Exchange may consider such information when deciding whether to open a series despite the delay in the opening of the underlying. Exchanges continue to increase connectivity communication among each other, and thus the Exchange Help Desk generally is aware of any delayed openings in the underlying securities, making this provision obsolete.

While DPMs and LMMs may still communicate any issues related to an opening to the Exchange, given that CBOE generally knows of these issues prior to them being reported by DPMs and LMMs, the Exchange does not believe the rules should impose this reporting requirement on DPMs and LMMs. Given the increased importance of speed within the marketplace, the Exchange believes it is necessary to have the ability to react

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<sup>36</sup> See supra note 30.

to any issues is it aware of, even though it may not have yet received information from DPMs or LMMs. Additionally, pursuant to proposed paragraph (f) (as discussed below), the Exchange's Help Desk may compel the opening of a series for the reasons set forth in that paragraph. Therefore, the Exchange proposes to delete this provision.

- Current Rule 6.2B provides in various places Exchange Floor Officials, including paragraphs (b)(ii), (e) and (f) and Interpretations and Policies .01 and .08. The Exchange believes it is simpler to have one single rule provision within Rule 6.2B that applies to the entire rule stating designated Exchange personnel may determine whether to modify the opening procedures when they deem necessary. The Exchange proposes to delete these references and combine them into current paragraph (f) and proposed paragraph (e). Additionally, the Exchange proposes to amend proposed paragraph (e) to state senior Help Desk personnel make these determinations. This is consistent with the current language that states Floor Officials make these determinations. However, the Exchange proposes to clarify in the rules the Floor Officials that do make these determinations are located in the Help Desk, as this terminology is more familiar to market participants.<sup>37</sup> The proposed rule change lists examples of actions Senior Help Desk personnel have flexibility to take when necessary in the interests of commencing or maintaining a fair and orderly market (some of which are listed throughout current Rule 6.2B), in the event of unusual market conditions or in the public interest, including delaying or compelling the opening of any series in any options class, modifying timers or settings described in Rule 6.2B, and not using the modified opening procedure set forth in proposed

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<sup>37</sup> Current paragraph (b)(ii) references the Exchange Control Room. The Control Room is now referred to as the Help Desk, so the Exchange proposes to delete the references to the Control Room.

Interpretation and Policy .01. The proposed rule change adds the Exchange will make and maintain records to document all determinations to deviate from the standard manner of the opening procedure, and periodically review these determinations for consistency with the interests of a fair and orderly market.

- Rule 6.2B, Interpretation and Policy .01(b) states the DPM or LMM must enter opening quotes that comply with the bid/ask differential requirements determined by the Exchange on a class-by-class basis and that if there is not a quote present in a series that complies with the bid/ask differential requirements established by the Exchange, then that series will not open. As discussed above, bid/ask differential requirements apply to all Market-Maker quotes, and whether the System opens a series depends on whether the opening quote satisfies the OEPW range (not bid/ask differentials) for the series. Thus, the Exchange believes including language that DPMs and LMM must comply with bid/ask differential requirements in the opening procedures rules is duplicative of rules regarding Market-Maker obligations related to bid/ask differential requirements (including Rules 8.7, 8.15, 8.15A and 8.85). Additionally, because the proposed rule change explicitly states all provisions of Rule 6.2B apply to Hybrid 3.0 classes except as provided in proposed paragraph (i), the Exchange does not believe it is necessary to repeat in subparagraph (a) the opening quote must satisfy the OEPW range.

- The Exchange also proposes to delete current Interpretation and Policy .01(c)(v), which states the HOSS system will automatically generate cancels immediately prior to the opening of the applicable index option series for broker-dealer, Market-Maker, away market-maker, and specialist (i.e., non-public customer) orders that remain on the book following the modified HOSS opening procedures. This provision applies to Hybrid 3.0

classes (a similar provision is not in current Interpretation and Policy .08 regarding the modified opening procedure for Hybrid classes). As discussed above, proposed Rule 6.2B(h)(ii) states non-public customers may only enter opening rotation orders in Hybrid 3.0 classes. By definition, the System will cancel opening rotation orders that do not execute during the opening rotation of a series, making this provision is redundant. Further, the Exchange proposes to delete current Interpretation and Policy .01(c)(vi) regarding publication of an imbalance of contracts, as this is covered by proposed Rule 6.2B(d)(iii) regarding dissemination of expected opening messages if a series does not open.

- The proposed rule change deletes Interpretation and Policy .08. The modified opening procedures described in Interpretations and Policies .01 and .08 are nearly identical for Hybrid and Hybrid 3.0 classes. Therefore, the proposed rule change amends Interpretation and Policy .01 (as amended by this proposed rule change) to apply to all classes. Proposed Interpretation and Policy .01 does not distinguish between 30-day volatility indexes and short-term volatility indexes, as the modified opening procedure operates in the same manner for all volatility indexes on settlement dates.<sup>38</sup>

### Exchange Determinations

There are various provisions throughout Rule 6.2B that allow the Exchange to make certain determinations on a class-by-class basis. However, pursuant to Rule 8.14, Interpretation and Policy .01,<sup>39</sup> the Exchange may authorize groups of series of a class to trade on different

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<sup>38</sup> The proposed rule change deletes references to VXST, the CBOE Short-Term Volatility Index, in Interpretation and Policy .01, as VXST is a type of volatility index and does not need to be specified.

<sup>39</sup> Rule 8.14, Interpretation and Policy .01 provides the Exchange may determine to authorize a group of series of a Hybrid 3.0 class to trade on the Hybrid system, in which

trading platforms, and thus, the Exchange would make determinations for each group rather than the class as a whole. Proposed Interpretation and Policy .05 provides, for these groups, the Exchange may make determinations pursuant to Rule 6.2B and the Interpretations and Policies thereunder on a group-by-group basis that would otherwise be made on a class-by-class basis. The proposed rule change also adds to proposed Interpretation and Policy .05 it will announce via Regulatory Circular with appropriate advanced notice any determinations it makes under Rule 6.2B to ensure Trading Permit Holders are aware of these determinations and have sufficient time to make any necessary changes in response to the determinations.

#### Nonsubstantive Changes

The proposed rule change makes numerous nonsubstantive and clerical changes throughout Rule 6.2B and in Rule 6.53(l), including adding or amending headings and defined terms, updating cross-references, adding introductory and clarifying language, using consistent language and punctuation, replacing terms such as “option series” with series (all series listed for trading on the Exchange are for options, making it unnecessary to include “option”), and using more plain English. The proposed rule change also amends current Rule 6.2B(g) and proposed Rule 6.2B(f) to indicate the procedure described in Rule 6.2B may be used to reopen a series, in addition to a class, after a trading halt. This proposed changes addresses a potential situation in which only certain series are subjected to halt. As series open on an individual basis, the Exchange does not believe this to be a significant change. The proposed rule change also adds detail regarding notice of use of this opening procedure following a trading halt and clarifies the procedure would be the same, however, based on then-existing facts and circumstances, there

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case the Exchange would establish trading parameters on a group basis to the extent rules otherwise provide for such parameters to be established on a class basis. Thus, this proposed change is consistent with current rules.

may be no pre-opening period or a shorter pre-opening period than the regular pre-opening period. Specifically, proposed paragraph (f) states the Exchange will announce the reopening of a class or series after a trading halt as soon as practicable via verbal message to the trading floor and electronic message to Trading Permit Holders that request to receive such messages.<sup>40</sup>

CBOE believes it is in investors' best interests to reopen a class or series as soon as possible after a trading halt, which may make advance notice in certain situations impractical. The proposed rule change provides the Exchange with the ability to re-open as quickly as possible following a halt.

The Exchange also proposes to amend Interpretation and Policy .04, which states the Exchange may determine on a class-by-class basis which electronic algorithm from Rule 6.45A or 6.45B, as applicable, applies to the class during rotations. The proposed rule change makes the electronic algorithm that applies to a class intraday the algorithm that applies to a class during rotations, but still leaves the Exchange with the same flexibility to apply a different algorithm to a class during rotations if it deems necessary or appropriate. This proposed change merely makes the intraday algorithm the default opening algorithm for a class. The Exchange believes it is important to maintain this flexibility so that it can facilitate a robust opening with sufficient liquidity in all classes.

The Exchange also proposes to amend Rules 6.1A(e)(iii)(C), 8.15(b)(v), 8.85(a)(xi), and 17.50(g)(14) to update cross-references related to proposed changes described above.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

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<sup>40</sup> The proposed rule change also notes the Exchange may reopen a class after a trading halt as otherwise set forth in the Rules, including Rules 6.3, 6.3B, and 6.3C.

Section 6(b) of the Act.<sup>41</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>42</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>43</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change enhances the description of the opening procedures in the rules to reflect how the System opens series, which perfects the mechanism of a free and open market and ultimately protects investors. The Exchange believes the proposed rule changes to reorganize and enhance the description of the opening (and sometimes) closing procedures (for Hybrid and Hybrid 3.0 classes) will benefit investors, because the rule as amended more accurately and clearly describes how the System opens series on the Exchange. Thus, investors will have a better understanding of how their quotes and orders will be handled during opening rotations if they elect to submit quotes and orders during the pre-opening period or if they have orders resting on the book from the prior trading day. Similarly, the Exchange believes the deletion of obsolete and duplicative provisions from Rule 6.2B will benefit investors by eliminating potential confusion about the applicability of those provisions. The

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<sup>41</sup> 15 U.S.C. 78f(b).

<sup>42</sup> 15 U.S.C. 78f(b)(5).

<sup>43</sup> Id.

nonsubstantive and clerical changes will create more consistency and clarity throughout and otherwise simplify the rule. Additionally, explicitly stating the few differences between the opening procedure for Hybrid classes and Hybrid 3.0 classes will further eliminate potential confusion from the rules and ultimately benefit investors. Further, the Exchange believes the additional information regarding notification of the use of the opening procedure following a trading halt will clarify for Trading Permit Holders when and how they will know from the Exchange such use is occurring.

The Exchange also believes the proposed changes to the modified opening procedures on settlement dates more clearly state the standard opening procedures apply in those situations except as specifically set forth in the Interpretation and Policy, which will also eliminate potential investor confusion. While the proposed rule change deletes the obligation for LMMs in Hybrid 3.0 classes to enter opening orders and quotes (in addition to the standard opening quoting obligation) on volatility settlement dates, the Exchange does not believe this impacts the balance of LMM obligations and benefits, as this obligation applies only to a brief period of time on certain days. Market-Maker obligations generally do not require the entry of orders in addition to quotes. Additionally, LMMs in Hybrid 3.0 must enter opening quotes in accordance with the obligation in Rule 8.15, including in series of classes that may be used to calculate the exercise and final settlement values of options or futures on the volatility index on settlement dates. The Exchange believes the standard opening quoting obligation, in addition to other general obligations applicable to LMMs, provides sufficient liquidity in these series on the volatility settlement days and thus does not believe it is necessary to impose additional opening quoting obligations on LMMs on those days. Additionally, the Exchange believes imposing the

same opening quoting obligation on LMMs every day will promote compliance with the obligation.

The revised opening conditions (for both the standard opening procedures and HAL opening procedures) are intended promote just and equitable principles of trade, as they ensure that series open in a fair and orderly market with sufficient liquidity in the series and opportunities for execution at prices that are consistent with then-current market conditions rather than potentially extreme prices. These proposed changes ensure that market participants are aware of all circumstances under which the System may not open a series.

The proposed rule change to allow the Exchange to make determinations in Rule 6.2B for groups of series on different trading platforms provides the Exchange with the appropriate flexibility to make these determinations in a manner consistent with how the System's opening (and closing) process, which it performs by series, not class. It is also consistent with Exchange rules that permit the Exchange to authorize a group of series of a class for trading on different platforms. The Exchange believes this consistency removes impediments to and perfects the mechanism of a free and open market and promotes just and equitable principles of trade.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The opening procedures as revised by the proposed rule change will still apply to all market participants in the same manner as they do today. The proposed rule change more accurately describes the opening procedures that are currently in place on the Exchange, which procedures are designed to open series on the Exchange in a fair and orderly manner. These changes have no impact on competition. The purposes of the opening conditions are to ensure there is

sufficient liquidity in a series when it opens and the series opens at prices consistent with the current market conditions (at the Exchange and other exchanges) rather than extreme prices that could result in unfavorable executions to market participants. The nonsubstantive changes as well as the deletion of obsolete and duplicative language have no impact on competition, as they are intended to eliminate confusion within and simplify the rules.

While the proposed rule change deletes the obligation for LMMs in Hybrid 3.0 classes to enter opening orders and quotes (in addition to the standard opening quoting obligation) on volatility settlement dates, the Exchange does not believe this impacts the balance of LMM obligations and benefits, as this obligation applies only to a brief period of time on certain days. Market-Maker obligations generally do not require the entry of orders in addition to quotes. Additionally, LMMs in Hybrid 3.0 must enter opening quotes in accordance with the obligation in Rule 8.15, including in series of classes that may be used to calculate the exercise and final settlement values of options or futures on the volatility index on settlement dates. The Exchange believes the standard opening quoting obligation, in addition to other general obligations applicable to LMMs, provides sufficient liquidity in these series on the volatility settlement days and thus does not believe it is necessary to impose additional opening quoting obligations on LMMs on those days. Additionally, the Exchange believes imposing the same opening quoting obligation on LMMs every day will promote compliance with the obligation.

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

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period

to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2016-071 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-CBOE-2016-071. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-2016-071, 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.<sup>44</sup>

Brent J. Fields  
Secretary

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<sup>44</sup> 17 CFR 200.30-3(a)(12).

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