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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79520; File No. SR-CBOE-2016-071]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Opening and Closing Rotations Under the HOSS System

December 9, 2016

I.   Introduction

On October 7, 2016, Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its rules relating to the opening of series for trading on the Exchange. The Commission published the proposed rule change for comment in the Federal Register on October 27, 2016.[3] On November 18, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order provides notice of filing of Amendment No. 1 and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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

[2]   17 CFR 240.19b-4.

[3]   See Securities Exchange Act Release No. 79133 (October 21, 2016), 81 FR 74828 (October 27, 2016) ("Notice").

[4]   In Amendment No. 1, the Exchange updated a cross-reference to Rule 6.2B in Rule 6.13. To promote transparency of its proposed amendment, when CBOE filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its website and placed in the public comment file for SR-CBOE- 2016-071 (available at https://www.sec.gov/comments/sr-cboe-2016-071/cboe2016071.shtml). The Exchange also posted a copy of its Amendment No. 1 on its website (http://www.cboe.com/aboutcboe/legal/submittedsecfilings.aspx), when it filed it with the Commission.

II.   Description of the Proposed Rule Change

CBOE proposes to amend its rules relating to the opening of series for trading on the Exchange. Rule 6.2B describes the process (referred to as "HOSS") that the Exchange's Hybrid Trading System (the "System") uses to open series on the Exchange each trading day. The Exchange may also use HOSS for closing series or opening series after a trading halt. The Exchange is proposing various changes to reorganize and simplify the rule and to more accurately reflect current System functionality.[5]

According to the Exchange, HOSS generally processes the opening of each series in four stages:[6]

(1) Pre-Opening Period: During the pre-opening period, the System accepts orders and quotes and disseminates 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 (collectively, "expected opening information" or "EOIs").

(2) Initiation of the Opening Rotation: The System then 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 to establish an opening Exchange best bid and offer ("BBO") and trade price for each series while continuing to disseminate EOIs.

(4) Opening of Trading: The System then opens series for trading, subject to the satisfaction of certain conditions.

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[5]   See Notice, supra note 3, at 74829.

[6]   See id.

According to CBOE, the proposed rule change is designed to more clearly organize Rule 6.2B in this sequential order and makes the additional specific changes discussed in more detail below.

Pre-Opening Period

Rule 6.2B(a) currently provides that the System accepts orders and quotes, 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.,[7] and for extended trading hours, for a period of time prior to 2:00 a.m.[8] The Exchange proposes to amend Rule 6.2B(a) to provide that, for each trading session, the pre-opening period will begin no later than 15 minutes prior to the expected initiation of an opening rotation and 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.[9]

Under the proposal, the Exchange generally will not restrict the size or origin code of orders that may be submitted during the pre-opening period. Therefore, the proposed rule change amends Rule 6.2B(a)(i) to add certainty to the rule by deleting the provision that requires the Exchange to designate—on a class-by-class basis—the eligible order size, eligible order type, and eligible order origin code (i.e. public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders) which the System will accept.[10] Additionally,

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[7]   All times set forth in Rule 6.2B are central time. See id. at 74829, n.3.

[8]   The precise time periods are determined by the Exchange on a class-by-class basis. See id. at 74829. In addition, since 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 ("ETPs")), the proposed rule change deletes the provision of the current rule that says the Exchange will determine the time on a class-by-class basis. See id.

[9]   The Exchange notes that the pre-opening period currently 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. See id. at 74829, n.4.

[10]   See Notice, supra note 3, at 74829.

the proposed rule change clarifies that the System will accept all quotes and all order types

during the pre-opening period except for immediate-or-cancel, fill-or-kill, intermarket sweep

orders, and Market-Maker trade prevention orders.[11] The proposed rule change also adds that if

an order entered during the pre-opening period for regular trading hours is not eligible for book

entry (e.g., minimum volume, not held, and market-if-touched orders), the System will route the

order via CBOE's order handling system pursuant to Rule 6.12.[12]

The proposed rule change amends Rule 6.2B(a)(ii) in several ways. First, it defines EOIs

and specifies the timing of their dissemination. EOIs contain information based on resting orders

and quotes in the Book, including the EOP, the EOS, any reason why a series may not open

pursuant to paragraph (d) of Rule 6.2B,[13] and any imbalance information, including the size and

side of the imbalance. EOIs will be disseminated to all market participants that have elected to

receive them beginning at a time determined by the Exchange, which will be no earlier than three

hours prior to the expected initiation of an opening rotation for a series. The System will then

disseminate EOI at regular intervals of time, or less frequently if there are no updates since the

previously disseminated EOI.[14]

The proposed rule change further modifies Rule 6.2B(a)(ii) to redefine the terms EOP

and EOS and address when that information will be disseminated. 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

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[11]   See id. at 74829-30 for a discussion of these order types, which are defined in Rule 6.53.

[12]   See id. at 74830. The Exchange notes that orders not eligible for book entry may only be traded open outcry on the Exchange floor. According to the Exchange, because only electronic trading is permitted during extended trading hours, the System will not accept these orders during the extended hours trading session and therefore, this proposed provision is not applicable during that trading session. See id. at 74830, n.6.

[13]   Proposed paragraph (d) of Rule 6.2B sets forth certain Opening Conditions, which are discussed in greater detail below.

[14]   See Notice, supra note 3, at 74830.

expected to trade and provides that an EOP will 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 that the EOP is the price at which any opening trade is expected to execute and adds that the EOS is the size of any expected opening trade. The proposed rule change further 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")[15] is not activated for openings; or (b) if the 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").[16]

Opening Rotation Initiation and Notice

Rule 6.2B(b) currently provides that, 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[17] (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,

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[15] 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 with the orders. See Rule 6.14A.

[16] See Notice, supra note 3, at 74830, for more detailed discussion of these changes to the pre-opening period.

[17] 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. Since the Exchange does not designate the primary volume market as the market for the underlying security for any class, the proposed rule change deletes that option. The proposed rule change also changes the term "market" to "exchange" and clarifies that the Exchange determines on a class-by-class basis which market is the market for the underlying security. See Notice, supra note 3, at 74830, n.10.

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the System initiates the opening rotation procedure and sends a notice ("Rotation Notice") to market participants.[18]

The Exchange proposes to amend Rule 6.2B(b) to provide that the System will initiate the opening rotation procedure and send out a Rotation Notice on a class-by-class basis as follows:

- For regular trading hours:

    o 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

    o 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.[19]

Opening Rotation Period

Rule 6.2B(c) provides that after the Rotation Notice is sent, the System enters into a rotation period, during which the opening price is established for each series. The proposed rule change reorganizes paragraph (c) to more clearly demarcate and further describe (1) when the opening rotation period begins, (2) what happens during the period, (3) the handling of EOIs during the period, and (4) when the period ends.[20]

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18   See id. at 74830-31.

19   See id. at 74831 (providing detailed description of the Exchange's changes to initiating the opening rotation).

20   See proposed Rule 6.2B(c). See also Notice, supra note 3, at 74831.

During the opening rotation period, the System establishes the opening trade price and the opening BBO by matching and executing resting orders and quotes against each other. The proposed rule change modifies 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.[21] The proposed rule change also states that 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. The Exchange notes that Contingency Orders that participate in the opening rotation may execute during the opening rotation period only if their contingencies are triggered.[22]

The proposed rule change clarifies that the System will continue to disseminate EOIs (not just the EOP and EOS) during the opening rotation period, which may be disseminated at more frequent intervals closer to the opening.[23] In addition, the proposed rule change updates the description of the length of the opening rotation period and adds detail to the description of how

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[21]   See Notice, supra note 3, at 74831. If there are multiple prices at which the same number of contracts would clear, the System will use (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. See id.

[22]   See id. at 74831-32. Further, the Exchange notes that 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). 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. See id. at 74832, n.13.

[23]   See id. at 74832.

the System processes series to open following the opening rotation period. Specifically, current subparagraph (c)(ii) states that 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.[24] Proposed subparagraph (c)(iii) retains that process, but clarifies that CBOE will determine the length and number of these intervals for all classes.[25]

Opening Quote and Trade Price

In its filing, the Exchange represented that, pursuant to the Options Price Reporting Authority ("OPRA") Plan, once a series opens, the System disseminates all quote and trade price information to OPRA, including opening quote and trade price information.[26] Accordingly, the Exchange proposes to delete text in current paragraph (d) of Rule 6.2B stating that the opening price is determined by series and that CBOE disseminates opening quote and trade information through OPRA because the Exchange already disseminates such information pursuant to the OPRA Plan, and therefore believes that this provision is unnecessarily repetitive.[27] Despite the deletion of that language from the rule concerning reporting data through OPRA, the Exchange is not proposing a substantive change to reporting this information through OPRA.

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[24] See id. at 74832.

[25] According to the Exchange, 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. See Regulatory Circular RG11-072; see also Notice, supra note 3, at 74832 n.14.

[26] See Notice, supra note 3, at 74832.

[27] See id. at 74832.

<u>Opening Conditions</u>

Current Rule 6.2B(e) provides that the System will not open a series if one of a number of specified conditions is met, including the absence of a quote that complies with the bid/ask differential requirements or if the opening price would not be within an acceptable range or would leave a market order imbalance.[28] The proposed rule change amends these conditions to provide that, in classes in which the Exchange has <u>not</u> activated HALO:

(1) if there are no quotes in the series on the Exchange, the System will not open the series;

(2) if the width between the Exchange's best quote bid and best quote offer is wider than an acceptable 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")[29] and there are orders or quotes marketable against each other, the System will not open the series. However, if the opening quote width is no wider than the intraday acceptable price range for the series ("IEPW range")[30] and there are no orders or quotes marketable against each other, the System will open the series. If the opening quote width is wider than the IEPW range, the System will not open the series. Additionally, according to the

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[28]   See <u>id.</u> at 74832. 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. In this case, 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). See <u>id.</u> at n.16.

[29]   Current OEPW settings are set forth in Regulatory Circular RG 13-025. See Notice, <u>supra</u> note 3, at 74832, n.18.

[30]   See Rule 6.13(b)(v).

Exchange, because all quotes entered by Market-Makers (including quotes entered during the pre-opening period and opening rotation period) must satisfy bid/ask differentials,[31] the Exchange proposes to delete the reference to bid/ask differential requirements in this provision;

(3) if the opening trade price would be outside of the OEPW range, the System will not open the series. The Exchange states that the proposed rule change also deletes the language from the current provision regarding sending a notification when this condition is present because notifications are sent when a series does not open for any reason; or

(4) if the opening trade would leave a market order imbalance, the System will 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 will open the series; if there is no bid in the series and the best offer is greater than $0.50, the System will not open the series. The proposed rule change deletes the language regarding the exception for series that will open at a minimum increment.[32] The proposed rule change also deletes the language from the current provision regarding sending a notification when this condition is present,

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[31] 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. See Notice, supra note 3, at 74833, n.20.

[32] 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. See Notice, supra note 3, at 74833.

because, as stated above, notifications go out when a series does not open for any reason.[33]

Separately, current Interpretation and Policy .03 to Rule 6.2B describes opening conditions that apply to classes in which the Exchange has activated HALO.[34] Among other things, the current conditions take into consideration whether the opening trade would be at a price that is not the national best bid or offer.[35] Current Interpretation and Policy .03(b) further describes what happens when each of these conditions is present, including exposure of marketable orders at the NBBO under certain conditions. The proposed rule change would amend the opening conditions applicable to classes in which the Exchange has activated HALO to provide as follows:

(1) If there are no quotes on the Exchange or disseminated from at least one away exchange present in the series, the System will not open the series;

(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, 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 will 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 will

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[33]   See Notice, supra note 3, at 74832-33 (describing in greater detail opening conditions set forth in proposed Rule 6.2B(d)(i)).

[34]   See id. at 74833-34 (providing a detailed description of the current opening conditions that apply to classes in which HALO is activated). The Exchange proposes to reorganize Rule 6.2B to keep the description of the applicable opening conditions for all classes in a single location within the rules. Therefore, the proposed rule change moves these opening conditions to proposed subparagraph (d)(ii) of Rule 6.2B. See id. at 74834, n.23.

[35]   See id. at 74833.

open the series. If the opening quote width is wider than the IEPW range, the System

will 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 will open the series by

matching orders and quotes to the extent they can trade and will report the opening trade,

if any, at the opening trade price. The System will 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).[36]

(3) if the opening trade price would be outside the OEPW range or the NBBO, the System

will open the series by matching orders and quotes to the extent they can trade and will

report the opening trade, if any, at an opening trade price not outside either the OEPW

range or NBBO. The System will then expose any remaining marketable buy (sell)

orders at the widest offer (bid) point of the OEPW range or NBO (NBB), whichever is

lower (higher);

(4) if the opening trade would leave a market order imbalance, the System will open the

series by matching orders and quotes to the extent they can trade and will report the

opening trade, if any, at the opening trade price. The System will then expose any

remaining marketable buy (sell) orders at the widest offer (bid) point of the OEPW range

or NBO (NBB), whichever is lower (higher); 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-

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[36]   Additionally, according to the Exchange, because all quotes entered by Market-Makers
(including quotes entered during the pre-opening period and opening rotation period)
must satisfy bid/ask differentials, the Exchange proposes to delete the reference to
bid/ask differential requirements from Rule 6.2B. See id. at 74834, n.24 and
accompanying text.

class and premium basis, the System will not open the series.[37] If the opening quote bid (offer) or NBO (NBO) 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 will 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.[38]

In addition, the proposed rule change makes other changes to current Interpretation and Policy .03, while retaining and moving around certain other provisions.[39] Among other things, for example, because the Exchange no longer uses an allocation period, it proposes to delete the provision regarding the allocation period of the HAL openings.[40] In addition, 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).[41]

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[37] 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. See id. at 74835, n.26.

[38] See id. at 74834-35.

[39] The proposed rule change stipulates that 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. See Notice, supra note 3, at 74835, n.27.

[40] See id. at 74835.

[41] See id.

The Exchange also proposes to add subparagraph (d)(iii), which provides that 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) until the condition causing the delay is satisfied or the Exchange otherwise determines it is necessary to open a series in accordance with proposed paragraph (e).[42]

Hybrid 3.0 Classes

The proposed rule change moves Rule 6.2B, Interpretation and Policy .01(a), which establishes a modified opening procedure for classes that trade on the Hybrid 3.0 platform, into the body of the rule in proposed paragraph (h). Interpretation and Policy .01 generally describes the modified opening procedures for Hybrid 3.0 series that are used to calculate volatility indexes.[43] The Exchange noted in its filing that 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.[44] The proposed rule change therefore moves this provision to proposed paragraph (h) within the body of the rule, rather than the Interpretation and Policy.

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[42]   Current Rule 6.2B(h) and proposed Rule 6.2B(g) provide that 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 non-substantive 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. See id. at 74835, n.28.

[43]   The only series trading on Hybrid 3.0 are SPX index options. See, e.g., CBOE FAQs, available at: https://www.cboe.org/publish/mmfaq/mmfaq.pdf ("All option classes on CBOE are Hybrid classes, except SPX, which contains both Hybrid series (SPX Weeklys under trading symbol SPXW) and Hybrid 3.0 series (all other SPX series under trading symbol SPX).").

[44]   See Notice, supra note 3, at 74835-36.

The introduction to proposed paragraph (h) states that all the provisions set forth in Rule 6.2B apply to the opening of Hybrid 3.0 series except as follows in subparagraphs (i) and (ii). Proposed paragraph (h)(i) provides that 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. Proposed paragraph (h)(ii) states that during the pre-opening period, the System will accept all order types eligible for entry from public customers (consistent with current paragraph (a) in Interpretation and Policy .01), but adds that the System only accepts opening rotation orders from non-public customers.[45]

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. Current Interpretation and Policy .01(b) requires the DPM or LMM to enter opening quotes in all series in a Hybrid 3.0 class during a modified opening procedure. 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.[46]

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 on expiration and final settlement dates for those indexes.[47] The introductory paragraph of

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[45] See id. at 74836. 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. See id. at 74836, n.31.

[46] See id. at 74836.

[47] Interpretation and Policy .08 has a substantially similar procedure for series in Hybrid

current paragraph (c) states that 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 Exchange states that the proposed introductory paragraph to Interpretation and Policy .01 simplifies these two sentences, which CBOE believes are redundant, and states that on the dates on which the exercise and final settlement values are calculated for options[48] 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).[49]

Current Interpretation and Policy .01(c)(i) states that all orders, other than spread or non-OPG 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. Since the Exchange permits the same order types during the

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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. See id. at 74836, n.34.

[48] The proposed rule references Rules 24.9(a)(5) and (6) (which references are also 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. See id. at 74836, n.35.

[49] See id. at 74836.

modified opening procedure as it does during the standard procedure, the proposed rule change deletes this paragraph.[50]

Exchange Determinations

Current Rule 6.2B provides in various places, including paragraphs (b)(ii), (e) and (f) and Interpretations and Policies .01 and .08, that Exchange Floor Officials 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 that senior Help Desk personnel make these determinations.[51] The proposed rule change lists examples of actions Senior Help Desk personnel may take in the interests of commencing or maintaining a fair and orderly market, 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 Interpretation and Policy .01. The proposed rule change adds that 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.[52]

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[50] See Notice, supra note 3, at 74836-37. 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 on all trading days. See id. at 74832.

[51] 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. See id. at 74837, n.37.

[52] See id. at 74837.

In addition, 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,[53] the Exchange may authorize groups of series of a class to trade on different 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 that, 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 that it will announce via Regulatory Circular with appropriate advance 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.[54]

Obsolete and Duplicate Language

The proposed rule change proposes to delete certain provisions because it believes the language is obsolete or duplicative. Those changes include the following:

- 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 that the Exchange may consider such information when deciding whether to open a series despite the delay in the opening of the underlying. According to CBOE, the CBOE Help Desk

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[53]   Rule 8.14, Interpretation and Policy .01, provides that the Exchange may determine to authorize a group of series of a Hybrid 3.0 class to trade on the Hybrid system, in which 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. See id. at 74838, n.39.

[54]   See id. at 74838

generally is aware of delayed openings in the underlying securities and thus this provision is no longer necessary. Additionally, the Exchange's Help Desk would have the ability to compel the opening of a series pursuant to proposed Rule 6.2B(f) and therefore proposes to delete this provision.[55]

- 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. Since the System will cancel opening rotation orders that do not execute during the opening rotation of a series, the Exchange believes 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 applies Interpretation and Policy .01 (as amended by this proposed rule change) to all classes.[56]

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[55] See id. at 74837.

[56] See Notice, supra note 3, at 74838. The proposed rule change deletes references to VXST, the CBOE Short-Term Volatility Index, in Interpretation and Policy .01, as VXST is only one type of volatility index and is not unique in its treatment under this rule. See id. at n.38.

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<u>Non-substantive Changes</u>

The proposed rule change, as modified by Amendment No. 1, makes numerous non-substantive and clerical changes throughout Rule 6.2B and in Rules 6.1A(e)(iii)(C), 6.13(b)(v)(B)(V), 6.53(l), 8.15(b)(v), 8.85(a)(xi), and 17.50(g)(14), including adding or amending headings and defined terms, updating cross-references, adding introductory and clarifying language, using consistent language and punctuation, and replacing terms such as "option series" with series.[57] The proposed rule change also amends current Rule 6.2B(g) and proposed Rule 6.2B(f) to clarify that the procedure described in Rule 6.2B may be used to reopen a series, in addition to a class, after a trading halt to address a potential situation in which only certain series are subjected to halt. The proposed rule change also adds detail regarding notice of use of this opening procedure following a trading halt and clarifies that the procedure would be the same, though depending on facts and circumstances, there may be no pre-opening period or a shorter pre-opening period. Proposed paragraph (f) further 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.[58]

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 default algorithm during rotations, but

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[57]   The Exchange notes that all series listed for trading on the Exchange are for options, therefore it does not believe that including the word "option" is necessary. <u>See</u> <u>id.</u> at 74838.

[58]   <u>See</u> <u>id.</u> at 74838. CBOE also notes that 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. <u>See</u> <u>id.</u> at n.40.

leaves the Exchange flexibility to apply a different algorithm to a class during rotations if it deems necessary or appropriate.[59]

III.   Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act,[60] and the rules and regulations thereunder applicable to a national securities exchange.[61] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[62] which requires, among other things, that a national securities exchange have rules 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.

In particular, the proposed rule change reorganizes and attempts to clarify the description of the opening (and sometimes closing) procedures, deletes text that the Exchange believes is either obsolete or unnecessary, removes certain discretion for the Exchange to make determinations under the rule on a class-by-class basis where CBOE no longer needs that discretion, and is intended to promote greater consistency across Rule 6.2B. The Commission notes that these changes may offer market participants a better understanding of how the Exchange's opening (and sometimes closing) procedures operate. To the extent the changes

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[59]   See id. at 74838.

[60]   15 U.S.C. 78f.

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

[62]   15 U.S.C. 78f(b)(5).

achieve that goal, they may promote transparency, reduce the potential for investor confusion, and assist market participants in deciding whether to participate in CBOE's trading rotations and, if they do participate, have confidence and certainty as to how their orders will be processed by the CBOE System.

The Commission believes that the proposed rule change is designed to promote just and equitable principles of trade by seeking to ensure that series open in a fair and orderly manner with sufficient liquidity and opportunities for execution at prices that are determined by market forces. In particular, the Exchange notes that the proposed rule change is designed to ensure that market participants are aware of the circumstances under which the System may not open a series.[63] Further, although the proposed rule change deletes the obligation for LMMs in Hybrid 3.0 classes to enter opening orders and quotes on volatility settlement dates, the Exchange has represented that it does not believe that this change will impact the balance of LMM obligations and benefits, as this obligation has been applied only to a brief period of time on a limited number of days.[64] In addition, 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.[65] The Exchange believes that 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.[66] Thus, CBOE does not believe it is necessary to impose additional opening quoting obligations on LMMs on those days.

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[63] See Notice, supra note 3, at 74839.

[64] See id.

[65] See id.

[66] See id.

Further, the proposed change more clearly specifies the situations in which the modified

opening procedures replace the opening procedures on settlement dates for certain series. The

proposed rule change also sets out the circumstances when the Exchange may exercise discretion

and strives to narrow that discretion within certain established parameters.[67] The proposed rule

change further requires the Exchange to document and periodically review Exchange decisions

made under the rule, including any deviations from the standard opening procedures, and

specifies that only senior Exchange officials can make those determinations and must do so in

limited specified circumstances with specific regard to the public interest.[68] In this manner,

Exchange determinations made under the rule should be transparent and made with due regard to

the Exchange's obligations under the Act.

For the foregoing reasons, the Commission finds that the proposed rule change, as

modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules and

regulations thereunder applicable to a national securities exchange.

IV.   Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning

the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent

with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

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[67]   Exchange determinations, including the establishment of parameters governing the opening process, will be set forth in Regulatory Circulars (or as otherwise specified by the Exchange under the proposed rule). On account of the critical importance of this information to investors' understanding of how the Exchange's System operates, CBOE should ensure that such information is prominently displayed, readily searchable and retrievable, up-to-date, and comprehensive.

[68]   See proposed Rule 6.2B(e). See also Notice, supra note 3, at 74837.

- Send an e-mail to 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].

V.   Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by

Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the <u>Federal Register</u>. In Amendment No. 1,[69] CBOE updated a cross-reference to Rule 6.2B in Rule 6.13. This change is consistent with the proposal as initially filed, and corrects a now-obsolete rule reference. The change does not introduce material, new, or novel concepts. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[70] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI.   <u>Conclusion</u>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[71] that the proposed rule change (SR-CBOE-2016-071), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[72]

Eduardo A. Aleman
Assistant Secretary

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[69]   <u>See</u> Amendment No. 1, <u>supra</u> note 4.

[70]   15 U.S.C. 78s(b)(2).

[71]   15 U.S.C. 78s(b)(2).

[72]   17 CFR 200.30-3(a)(12).

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