SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74923; File No. SR-CBOE-2015-030)

May 11, 2015

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Floor Broker Errors and the Use of Floor Broker Error Accounts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 30, 2015, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b-4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange seeks to update its rules related to floor broker errors and the use of floor broker error accounts. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated
Rules

* * * * *

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

2 17 CFR 240.19b-4.

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

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

Rule 6.79. Floor Broker Practices

(a) Liquidation or Reduction of Error Account Positions. For a position obtained as a result of a bona fide error, a floor broker may reduce or liquidate a position in the floor broker's error account ("error account position") in accordance with this Rule, but any profit/loss from the liquidation or reduction belongs to the floor broker ("liquidating floor broker").

A liquidating floor broker may personally represent an order that will liquidate or reduce the broker's error account position ("liquidation order"); however, a liquidating floor broker may not cross a liquidation order with a client's order also represented by the liquidating floor broker, unless the liquidating floor broker either: 1) prior to executing the orders, the liquidating floor broker informs the client of the broker's intention to execute the client's order against an order for the floor broker's error account and the client does not object; 2) the liquidating floor broker sends the liquidation order to an unassociated broker; or 3) the liquidating floor broker sends the client's order to a PAR Official. For 1 through 3 above, the client's order must either be displayed in the relevant order book or announced in open outcry in accordance with Rule 6.74. An unassociated broker for purposes of this rule is any broker who is not directly or indirectly controlling, controlled by, or under common control with the liquidating floor broker. After a floor broker executes a liquidation order, the floor brokers must notify the Exchange in a form and manner prescribed by the Exchange via Regulatory Circular.

(b) *Erroneously Executed Orders*. Orders erroneously executed (e.g., executing a call order as a put or a buy order as a sell) on the Exchange must clear in the error account of the floor broker that executed the erroneous order, unless the erroneously executed orders are nullified pursuant to a mutual agreement under Exchange Rules. It shall be considered conduct inconsistent with just and equitable principals of trade and a violation of Rule 4.1 for a floor broker to give a trade acquired

through an error to another Trading Permit Holder or for a Trading Permit Holder to accept a transaction that another Trading Permit Holder acquired through an error. If a floor broker discovers an order was erroneously executed on the Exchange, the floor broker shall proceed as follows:

(i) if a better price is available at the time the error was discovered, the client's order is entitled to be executed at the better price. If a better price is not available, then the floor broker is responsible at the price at which the client's order should have been executed, and the floor broker shall either: 1) execute the order at the available market and give the client a "difference check" or 2) execute the order out of the floor broker's error account and notify a CBOE Official, in a form and manner prescribed by the Exchange and announced via Regulatory Circular, for potential reporting of the error account transaction as late or out of sequence as necessary. If executing an order out of the floor broker's error account will reduce or liquidate a position in the floor broker's error account, the floor broker must follow the procedures in paragraph (a).

(c) Lost or Misplaced Market Orders. If a floor broker fails to execute a market order, the client's order is entitled to an execution on up to the size of the disseminated bid or offer at the time the order was received or at a better price if it is available at the time the error is discovered. If a better price or the price the client's order is entitled to is not available at the time the error is discovered, the floor broker shall provide an execution in the manner described in (b)(i) above. If the unexecuted market order is in excess of the disseminated bid or offer at the time the order was received, the execution price on the additional contracts shall be negotiated between the floor broker and client.

(d) *Legging Multi-Part Orders*. A floor broker is not restricted from legging multi-part orders. For the purposes of this Rule, multi-part orders include complex orders, stock-option orders, and futures and option orders where one of the legs is executed on the Exchange. If a broker executes a leg of a

complex option order, for example, the price of the remaining leg of the order must be within the current disseminated market (e.g., when a broker executes the buy side, the price of the sell side of the order must be at the disseminated offer price or lower). If a floor broker is unable to complete the execution of an order that the floor broker has legged, the floor broker must either: 1) offer the executed leg to the client; 2) liquidate the leg and then offer the trade, regardless of whether it's a profit or loss, to the client; 3) execute the remaining leg(s) of the order at the available market and give the client a "difference check"; or 4) execute the order out of the floor broker's error account and notify a CBOE Official, in a form and manner prescribed by the Exchange and announced via Regulatory Circular, for potential reporting of the error account transaction as late or out of sequence as necessary. The floor broker must document the time and to whom the offer noted in 1) and 2) above was made and retain this record. If executing an order out of the floor broker's error account will reduce or liquidate a position in the floor broker's error account, the floor broker must follow the procedures in paragraph (a).

(e) *Print-Throughs*. A print-through on a limit order occurs when a trade is effected at a better price than the order's limit during the time that the order should have been represented in the crowd. The order that is 'printed-through' is entitled to the number of contracts which trade through the order's limit up to the number of contracts specified in the order. Generally, the order that is 'printed-through' should be given a better price if it is available at the time the error is discovered. However, under certain circumstances, such as a systems failure, where a large number of orders were not received or receipt was delayed, it would not be improper for a floor broker to execute the client's order at the original limit price rather than the better price. A floor broker shall generally proceed as follows when a print-through has occurred:

(i) If a floor broker discovers a print-through and a better price is available at that time, the client's order is entitled to be executed at the better price. If a better price is no longer available, then the floor broker is responsible at the original limit price and the floor broker shall either: 1) execute the order at the available market and give the client a "difference check" or 2) execute the order out of the floor broker's error account and notify a CBOE Official, in a form and manner prescribed by the Exchange and announced via Regulatory Circular, for potential reporting of the error account transaction as late or out of sequence as necessary. If executing an order out of the floor broker's error account will reduce or liquidate a position in the floor broker's error account, the floor broker must follow the procedures in paragraph (a).

(ii) If a print-through occurs on the opening, the order that is 'printed-through' is entitled to the number of contracts which print through at the opening price. If a better price than the opening price is available at the time the error is discovered, the client's order shall be filled at the better price; if a better price is not available, the floor broker shall either: 1) execute the order at the available market and give the client a "difference check" or 2) execute the order out of the floor broker's error account and notify a CBOE Official, in a form and manner prescribed by the Exchange and announced via Regulatory Circular, for potential reporting of the error account transaction as late or out of sequence as necessary. If executing an order out of the floor broker's error account will reduce or liquidate a position in the floor broker's error account, the floor broker must follow the procedures in paragraph (a).

(f) *Stopping Orders*. A floor broker may not "Stop" or guarantee an execution on a client's order the floor broker is holding from the floor broker's error account because doing so would be acting as a market-maker in violation of Rule 8.8.

(g) *Documentation of Errors and Record Keeping Requirements*. All transactions executed for a floor broker's error account must be documented. These records must be retained for a minimum of three years, the first two years in an easily accessible place.

Rules adopted by the SEC under the Securities Exchange Act of 1934 (the "Act") require that a floor broker keep a copy of every order the floor broker receives, including orders received via hand signals or phone, and all cancelled orders and unexecuted orders. A floor broker may arrange to have these records kept on the floor broker's behalf; however, it is still the responsibility of the floor broker to produce such documents upon request. These records must be retained for a minimum of three years, the first two years in an easily accessible place. Failure to do so is a violation of the Act, SEC Rules 17a-3 and 17a-4, and CBOE Rules 4.2 ("Adherence to Law") and 15.1 ("Maintenance, Retention and Furnishing of Books, Records and Other Information").

…Interpretations and Policies:

.01 A liquidating floor broker executing a liquidation order in accordance with this rule in the trading crowd where the broker is active as a floor broker is not a violation of Rule 8.8. Additionally, CBOE Rules generally do not prohibit a floor broker from entering into transactions on other exchanges for the floor broker's personal account in financial instruments underlying or related to the classes in the trading crowd where the floor broker acts as a floor broker.

.02 Pursuant to the due diligence provisions of Rule 6.73, a floor broker's agency business has priority over the broker's liquidation orders.

* * * * *

The text of the proposed rule change is also 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 Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to adopt new Rule 6.79 to codify policies related to floor broker errors and the use of floor broker error accounts. The proposed rule incorporates several aspects of CBOE Regulatory Circular RG95-49.[5] In addition, the proposed rule will supersede RG95-49. The Exchange believes it would be beneficial to codify policies related to floor broker errors and the use of floor broker error accounts in Exchange rules in order to provide further detail regarding errors and the use of error accounts.

First, with proposed Rule 6.79(a), the Exchange proposes to clarify and amend its policy related to a floor broker representing orders for the floor broker's own error account. The general principle is that for a position obtained as a result of a bona fide error, a broker may reduce or liquidate a position in the floor broker's error account ("error account position") in accordance with proposed Rule 6.79, but any profit/loss from the liquidation or reduction belongs to the floor broker ("liquidating floor broker"). Furthermore, a liquidating floor broker

5 RG95-49 reissued Regulatory Circular RG94-44. RG94-44 was filed with the SEC and approved on June 1, 2014 [sic]. See SR-CBOE-93-44; Securities Exchange Act Release No. 34-34138 (June 7, 1994), 59 FR 108. The proposed rule will supersede RG95-49 and RG94-44.

may personally represent an order that will liquidate or reduce the floor broker's error account position ("liquidation order"). As stated, the proposed rule does not prohibit floor brokers from personally representing a liquidation order, except in limited circumstances. For example, a liquidating floor broker may not cross a liquidation order with a client's order[6] also represented by the floor broker, unless either: 1) prior to executing the orders, the liquidating floor broker informs the client of the floor broker's intention to execute the client's order against an order for the floor broker's error account and the client does not object[7]; 2) the liquidating floor broker sends the liquidation order to an unassociated broker[8]; or 3) the liquidating floor broker sends the client's order to a PAR Official.[9] For 1 through 3 above, the client's order must either be displayed in the relevant order book or announced in open outcry in accordance with Rule 6.74.[10]

---

6 RG95-49 utilized the term customer. The proposed rule replaces 'customer' with 'client' in order to avoid confusion as to the type of 'customer' (i.e., retail customer, client customer, etc.) referred to in RG95-49.

7 In order to exit an error account position, floor brokers often solicit contra side orders. The Exchange believes floor brokers should be able to cross liquidating orders with those solicited orders. In addition, the Exchange notes that client consent is presumed only after the client has been properly notified. The Exchange also notes that the client may always object to the transaction, which will prohibit the floor broker from crossing the liquidation order with the objecting client's order. Additionally, notification will be made on a per order basis.

8 The Exchange notes that sending the liquidation order to an unassociated broker removes the potential conflict of interest between a floor broker's due diligence requirements and the floor broker's personal interest in executing a trade for himself. In addition, as noted below, the client's order is further protected by requiring the order to either be displayed in the order book or announced via open outcry.

9 RG95-49 utilized the term OBO's and DPM. The Exchange proposes to remove the reference to OBOs, as the Exchange no longer has OBOs. The Exchange also proposes to replace DPM with PAR Official.

10 The Exchange believes client consent protects clients by allowing them to determine on a per order basis whether their interests are being served by trading with a liquidating floor broker. The Exchange also notes that the requirement to either display the client's order in the relevant order book or announce the crossing transaction in open outcry also serves to protect the client by ensuring the client's order has access to greater liquidity and potentially better prices.

An unassociated broker for purposes of this rule is any broker who is not directly or indirectly controlling, controlled by, or under common control with the liquidating broker. In addition, after a floor broker executes a liquidation order, the floor brokers must notify the Exchange in a form and manner prescribed by the Exchange via regulatory circular.[11] The Exchange believes the proposed method for liquidating an error account position is non-controversial because the procedural requirements, especially requiring the client's order to either be displayed in the relevant order book or announced in open outcry in accordance with Rule 6.74, help to ensure the client's order receives the best possible execution price.

Next, proposed Rule 6.79(b) requires erroneously executed orders (e.g., executing a call order as a put or a buy order as a sell) to be cleared in the error account of the floor broker that executed the erroneous order (creating an "error account position") unless the erroneously executed orders are nullified pursuant to a mutual agreement under Exchange rules.[12] Furthermore, it will be considered a violation of just and equitable principles of trade and a violation of CBOE Rule 4.1 for a floor broker to give a trade acquired through error to another

---

11 The Exchange notes that this provision will allow CBOE to surveil for potential abuses related to floor brokers liquidating positions, especially when a liquidating floor broker trades with a client order.

12 CBOE Rule 6.19 currently provides that "[a] trade on the Exchange may be nullified or adjusted if the parties to the trade agree to the nullification or adjustment." However, as part of an industry-wide initiative to harmonize exchange rules regarding obvious errors, Rule 6.19 will be replaced by revised Rule 6.25. With regards to mutually agreed nullifications and adjustments, revised Rule 6.25 is proposed to state that "[a] trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 7:30 a.m. Central Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any TPH to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder." See Securities Exchange Act Release No. 34-73884 (December 18, 2014), 79 FR 77557 (June 2, 2009 [sic]) (SR-BATS-2014-067).

Trading Permit Holder ("TPHs").[13] The proposed rule also makes it a violation of Rule 4.1 for a TPH to accept a trade that another TPH has acquired through an error. The Exchange believes that maintaining a uniform process for the handling of errors by floor brokers is appropriate. More specifically, by not allowing the transfer of error positions between floor brokers and market-makers, the Exchange is eliminating perceived conflicts of interest that may result from error account position transfers between TPHs.

In addition to the above restriction, proposed Rule 6.79(b)(i) provides that if a floor broker discovers an order was erroneously executed on the Exchange, the floor broker shall generally proceed as follows: if a better price is available at the time the error was discovered, the client's order is entitled to be executed at the better price. If a better price is not available, then the floor broker is responsible at the price at which the client's order should have been executed, and the floor broker shall either: 1) execute the order at the available market and give the client a "difference check" or 2) execute the order out of the floor broker's error account[14] and notify a CBOE Official, in a form and manner prescribed by the Exchange and announced via Regulatory Circular, for potential reporting of the error account transaction as late or out of sequence as necessary. Additionally, if executing an order out of the floor broker's error account will reduce or liquidate a position in the floor broker's error account, the floor broker must follow the procedures in paragraph (a). The Exchange believes giving floor brokers the option to execute the client's order out of the floor broker's error account is non-controversial because RG95-49 generally provides the same relief for print-throughs, lost or misplaced market orders,

---

13 RG95-49 referred to Trading Permit Holders as "members", and the proposed rule seeks to update the terminology in this respect.

14 The Exchange notes that the Continuous Trade Match System ("CTM") is the mechanism by which a floor broker would execute a client's order out of the floor broker's error account.

and erroneously executed orders. Although under RG95-49 when a print-through, lost or misplaced market order, or erroneously executed order is discovered during trading hours floor brokers are prohibited from correcting the error by filling the client out of an error account if doing so would reduce or liquidate a position in the floor broker's error account, the proposed rule is non-controversial because the floor broker must follow the procedures outlined in paragraph (a) of Rule 6.79 whenever reducing or liquidating a position in the floor broker's error account. As noted above the procedural requirements of Rule 6.79(a), especially requiring the client's order to either be displayed in the relevant order book or announced in open outcry in accordance with Rule 6.74, help to ensure the client's order receives the best possible execution price.[15]

Next, proposed Rule 6.79(c) seeks to codify policies related to lost or misplaced market orders[16]. The Exchange believes it's beneficial to codify the lost or misplaced market orders policy because doing so more adequately notifies floor brokers of their obligations and clients of their rights regarding lost or misplaced market orders. The proposed rule mandates that if a floor broker fails to execute a market order that has been lost or misplaced, the client's order is entitled to an execution on up to the size of the disseminated bid or offer at the time the order was received or at a better price if it is available at the time the error is discovered. If a better price or the price the client's order is entitled to is not available at the time the error is discovered, the floor broker shall provide an execution in the manner described in (b)(i). If the unexecuted

---

15 The Exchange believes that all similar provisions in this proposed rule that allow a floor broker to provide a fill out of the broker's error account are non-controversial for the same reasons outlined above.

16 The Exchange notes, however, that this provision does not mandate that off floor brokers follow the procedures in 6.79(c); however, to the extent that a transaction is executed on the Exchange to fix an error due to a lost or misplaced market order, the broker will be held to the standard set forth in Rule 6.79(c).

market order is in excess of the disseminated bid or offer at the time the order was received, the execution price on the additional contracts shall be negotiated between the floor broker and client.

Next, proposed Rule 6.79(d) sets forth specific policies related to legging multi-part orders.[17] The Exchange believes it's beneficial to describe the procedures a floor broker must follow when the broker is unable to complete an order the floor broker has legged. If a floor broker executes a leg of a complex option order, for example, the price of the remaining leg of the order must be within the current disseminated market (e.g., when a broker executes the buy side, the price of the sell side of the order must be at the disseminated offer price or lower). If a floor broker is unable to complete the execution of an order that the floor broker has legged, the floor broker must either: 1) offer the executed leg to the client; 2) liquidate the leg and then offer the trade, regardless of whether it's a profit or loss, to the client; 3) execute the remaining leg(s) of the order at the available market and give the client a difference check; or 4) execute the order out of the floor broker's error account[18] and notify a CBOE Official, in a form and manner prescribed by the Exchange and announced via Regulatory Circular, for potential reporting of the error account transaction as late or out of sequence as necessary. The floor broker must

---

17 Multi-part orders include complex orders, stock-option orders, and futures and option orders where one of the legs is executed on the Exchange.

18 The Exchange recognizes that RG95-49 stated that if a floor broker was unable to complete an order the broker legged, the broker could not provide an execution on the unexecuted portion of the order from the broker's error account because doing so would be acting as a market-maker in violation of Rule 8.8. The Exchange now believes that failing to complete an order that the broker has legged is as much an error as a print-through and providing an execution with an error account would not implicate Rule 8.8 in most situations. The Exchange recognizes, however, that a pattern and practice of consistently using the error account in this manner may lead the Exchange to the conclusion that a broker is acting like a market-maker in violation of Rule 8.8. The same is true for the other provisions of the proposed rule that allow a broker to provide a client a fill via the broker's error account.

document the time and to whom the offer noted in 1) and 2) above was made and retain this record. Additionally, if executing an order out of the floor broker's error account will reduce or liquidate a position in the floor broker's error account, the floor broker must follow the procedures in paragraph (a).

Next proposed Rule 6.79 (e) seeks to codify policies related to print-throughs.[19] The rule mandates that if a print-through is discovered the order that is 'printed-through' should be executed at the available market at the time the print-through is discovered. If the available market is at a better price, the order that is 'printed-through' is entitled to the better price. If the available market is at a worse price, the floor broker becomes responsible at the original limit price[20] and must either: 1) execute the order at the available market while providing the client a "difference check" or 2) execute the order out of the floor broker's error account and notify a CBOE Official, in a form and manner prescribed by the Exchange and announced via Regulatory Circular, for potential reporting of the error account transaction as late or out of sequence as necessary.[21] Additionally, if executing an order out of the floor broker's error account will

---

19 A print-through on a limit order occurs when a trade is effected at a better price than the order's limit during the time that the order should have been represented in the crowd. For example, a floor broker holds a client's limit order to sell at $1.00. If a trade occurs at $1.05 during the time in which the order should have been represented in the trading crowd, a print-through has occurred.

20 The rule contemplates situations in which the client would not be entitled to the better price. For example, a systems failure that causes a large number of orders to not be received or if receipt was delayed.

21 RG95-49 provided for three separate procedures for print-throughs (print throughs during trading hours; print-throughs outside trading hours; and print-throughs on the opening). Although the proposed rule includes a separate procedure for print-throughs occurring on the opening, the Exchange believes the proposed rule protects investors and avoids potential confusion related to separate procedures by consolidating procedures related to print-throughs during trading hours and print-throughs outside trading hours. In addition, the Exchange notes that the proposed rule provides that for a print-through that occurs on the opening, the order that is 'printed-through' is entitled to the number of contracts which print through at the opening price. For print-throughs not occurring on the

reduce or liquidate a position in the floor broker's error account, the floor broker must follow the procedures in paragraph (a).

Next, proposed Rule 6.79(f) seeks to codify its policy related to stopping orders. Again, pursuant to Rule 8.8, the Exchange believes it is a violation of Rule 8.8 for a broker to "Stop" or guarantee an execution on a client's order he is holding from the floor broker's error account. The Exchange believes that prohibiting floor brokers from stopping orders or guaranteeing an execution on a client's order from the floor broker's error account ensures that the floor broker is acting in the best interest of the floor broker's client; rather than the interest of the broker's proprietary position.

Next, proposed Rule 6.79(g) seeks to codify its policy related to the documentation of errors and record keeping requirements. The proposed rule mandates that "[a]ll transactions executed for a floor broker's error account must be documented." In addition, the "records must be retained for a minimum of three years, the first two years in an easily accessible place." In addition, in order to further stress the importance of maintaining adequate and complete records, the Exchange specifies some of the records that must be maintained in accordance with the Securities Exchange Act of 1934, SEC Rules 17a-3 and 17a-4, and CBOE Rules 4.2 ("Adherence to Law") and 15.1 ("Maintenance, Retention and Furnishing of Books, Records and Other Information), including all cancelled orders and unexecuted orders.

Next, the Exchange proposes to adopt Interpretation and Policy .01 to provide clarity regarding its policy prohibiting floor brokers from acting as market-makers. According to CBOE rules[22] floor brokers are generally prohibited from acting as a market-maker on the same

---

opening, the proposed rule does not limit the number of contracts to which the order is entitled.

22 CBOE Rule 8.8.

business day in which they act as a floor broker. However, Rule 8.8 is not clear on whether a floor broker representing the broker's error account is acting as a market-maker. The Exchange does not believe in the ordinary course of business that a floor broker is acting as a market-maker when providing fills via an error account in accordance with this proposed rule or executing liquidating orders in accordance with this proposed rule. However, as noted previously, the Exchange recognizes that a pattern of consistently using an error account to provide fills to customers may lead the Exchange to the conclusion that a floor broker is acting as a market-maker in violation of Rule 8.8. In addition, although the proposed rule clearly states that a broker may execute liquidation orders, Interpretation and Policy .01 makes it abundantly clear that the prohibition against a broker acting as a market-maker does not apply to a liquidation order being executed by a liquidating floor broker in the trading crowd in which the floor broker is active. In addition, CBOE Rules generally do not prohibit a floor broker "from entering into transactions on other exchanges for the floor broker's personal account in financial instruments underling or related[23] to the classes in the trading crowd where the floor broker acts as a floor broker." The Exchange notes, however, that it would be a violation of CBOE Rules 4.1 ("Just and Equitable Principles of Trade") and 6.73 ("Responsibilities of Floor Brokers") and Regulatory Circular RG94-76 ("Front-running of Blocks") for a floor broker to enter into transactions in an underlying or related financial instrument based on information concerning a client's option order the floor broker holds, and regulatory staff monitors for such activity in the same manner it monitors for front-running generally. In addition, floor broker transactions in

---

[23] A related financial instrument would include index futures if you are an OEX or SPX floor broker, OEX options if you are an SPX floor broker, and SPX options if you are an OEX floor broker.

underlying or related financial instruments are not entitled to good faith credit under Regulation T and must be margined as customer transactions.

Finally, the Exchange proposes to adopt Interpretation and Policy .02 to make it clear that a broker's agency business takes priority over a floor broker's liquidation orders. For example, marketable agency orders should be executed prior to a broker attempting to liquidate or reduce the broker's error account position.

To conclude, the Exchange believes that the proposed rule is in furtherance of the Act because it will allow floor broker's a straight-forward mechanism for liquidating error account positions while protecting investors. As stated above, the Exchange intends to release a Regulatory Circular to announce the implementation of the Rule and other specifics surrounding the procedures of the implementation. In addition, prior to implementation, the Exchange will ensure it has proper policies and procedures in place to correctly administer the Rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[24] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[25] 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

---

24 15 U.S.C. 78f(b).

25 15 U.S.C. 78f(b)(5).

investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[26] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, in addition to codifying relevant portions of RG95-49, the Exchange believes that the proposed rule change enhances several aspects of RG95-49, which helps perfect the mechanism of a free and open market and protect investors and the public interest. Where RG95-49 disallows a floor broker from crossing a client order with an order for the broker's error account (i.e., a client order reducing an error account position), the proposed rule allows the activity if certain procedures are followed (e.g., notifying a client that the broker intends to execute the client's order against an order for the broker's error account in order to allow the client to consent to trade with the floor broker's error account), which promotes a free and open market by allowing brokers to source liquidity.

In addition, where RG95-49 ensured that a customer is entitled to only ten contracts at the disseminated bid or offer when a broker loses or misplaces a market order, the proposed rule provides that the customer is entitled to the price and size of the disseminated bid or offer, which the Exchange believes promotes just and equitable principles of trade because it more adequately reflects the size and price that a customer would have been entitled to if no mistake was made. Also, where RG95-49 prohibits the use of a floor broker error account to provide an execution to a client in certain circumstances (e.g., when providing a fill from an error account to correct a print-through, lost or misplaced market order, or erroneously executed order would reduce or liquidate a position in the floor broker's error account or when providing a fill from an error account to provide an execution on an unexecuted portion of a multi-leg order,), the proposed

---

[26] Id.

rule gives the broker the flexibility to execute the order out of the broker's error account, which protects investors and the public interest by ensuring that customer orders are executed. As noted above, the Exchange believes giving floor brokers the option to correct an error by executing the client's order out of the floor broker's error account is non-controversial because RG95-49 generally provides the same relief for print-throughs, lost or misplaced market orders, and erroneously executed orders. Although under RG95-49 when a print-through, lost or misplaced market order, or erroneously executed order is discovered during trading hours floor brokers are prohibited from correcting the error by filling the client out of an error account if doing so would reduce or liquidate a position in the floor broker's error account, the proposed rule is non-controversial because the floor broker must follow the procedures outlined in paragraph (a) of Rule 6.79 whenever reducing or liquidating a position in the floor broker's error account. As noted above the procedural requirements of Rule 6.79(a), especially requiring the client's order to either be displayed in the relevant order book or announced in open outcry in accordance with Rule 6.74, help to ensure the client's order receives the best possible execution price. Finally, where RG95-49 provided for three separate procedures for print-throughs (print throughs during trading hours; print-throughs outside trading hours; and print-throughs on the opening), the proposed rule protects investors and avoids potential confusion related to separate procedures (even though the proposed rule maintains a separate procedure for print-throughs that occur on the opening) by consolidating procedures related to print-throughs during trading hours and print-throughs outside trading hours.

Additionally, the proposed rule prevents fraudulent and manipulative acts and practices by requiring brokers to clear errors in their own accounts unless nullified pursuant to a mutually agreement under Exchange rules. Furthermore, requiring floor brokers to notify the Exchange

after executing an order for the floor broker's error account or providing a fill to a client via the floor broker's error account will aid the Exchange in the surveillance of error account activity, which helps prevent fraudulent and manipulative acts and practices and promotes just and equitable principles of trade. Finally, the Exchange believes the proposed rule promotes just and equitable principles of trade by ensuring client orders are not harmed for mistakes that are the fault of brokers. The Exchange does not believe the proposed rule is unfairly discriminatory toward customers, issuers, or brokers because the proposed rule simply sets forth the process for floor brokers to correct certain mistakes.

Finally, the proposed rule change is also consistent with Section 11(a)(1) of the Act and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. Examples of common exemptions include the exemption for transactions by broker dealers acting in the capacity of a market maker under Section 11(a)(1)(A), the "G" exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder, and "Effect vs. Execute" exemption under Rule 11a2-2(T) under the Act. In this regard, we note that, consistent with existing Exchange Rules for effecting proprietary orders from on the floor of the Exchange, Floor Broker TPHs effecting orders for their error accounts and relying on the G exemption would be required to yield priority to any interest in the electronic book at the same price (not just public customer orders) to ensure that non-member interest is protected.

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. More specifically, the Exchange does not believe the proposed rule changes will impose any burden on intramarket competition because it will be applicable to all floor brokers. In addition, the Exchange does not believe the proposed changes will impose any burden on intermarket competition because proposed Rule 6.79 simply provides a clearer mechanism for correcting errors.

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

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[27] and Rule 19b-4(f)(6)[28] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

---

27 15 U.S.C. 78s(b)(3)(A).

28 17 CFR 240.19b-4(f)(6).

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.[29]

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2015-030 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-2015-030. 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

---

[29] In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2015-030, 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.[30]

Robert W. Errett
Deputy Secretary

[30] 17 CFR 200.30-3(a)(12).