

public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may amend its name as of April 3, 2017. The Exchange stated that it intends to announce the name change for ISE Mercury and certain of its affiliated markets on the same date to reflect the unified ownership of these markets by Nasdaq, Inc.<sup>12</sup> The Exchange believes that changing the names of all three affiliated markets at the same time is consistent with the protection of investors and the public interest because it will avoid any confusion that may arise with respect to the ownership by Nasdaq of the three markets, and will relieve various administrative burdens associated with the name changes.<sup>13</sup> The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>14</sup>

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

<sup>12</sup> The International Securities Exchange, LLC and ISE Gemini, LLC have proposed in separate rule changes to amend their names as of April 3, 2017. See Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017) (SR-ISEGemini-2017-13) (“Nasdaq GEMX Proposal”). See also Securities Exchange Act Release No. 34-80325 (March 29, 2017) (SR-ISE-2017-25) (“Nasdaq ISE Proposal”).

<sup>13</sup> For example, the Exchange states that it is notifying a number of parties of the name change along with members of all three of the markets; the Exchange and members may have to update contractual agreements or forms as a result of the name change; and administrative changes can be accomplished at the same time if the operative dates of all three of the entities are aligned. The Exchange believes that it is in the interest of the members of ISE and the members of other markets, as well as the public, to change the names of the three markets at the same time to avoid additional administrative burdens if it were to change the names of the three markets on different dates. See Item 7 of SR-ISEMercury-2017-05, Form 19b-4. The Exchange further states that it will provide notification of the name changes to the members of all three affiliated markets. *Id.*

<sup>14</sup> The Commission notes that it has also waived the operative delay for the proposed rule changes associated with the renaming of ISE Gemini, LLC to Nasdaq GEMX, LLC, and ISE Mercury, LLC to Nasdaq MRX, LLC. See Nasdaq GEMX Proposal, *supra* note 12; and Nasdaq MRX Proposal, *supra* note 12. For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISEMercury-2017-05 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-ISEMercury-2017-05. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 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-ISEMercury-2017-05, and should be submitted on or before April 25, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80328; File No. SR-CBOE-2017-024]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Reporting Duties

March 29, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 22, 2017, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Rules to provide guidance on Trading Permit Holder (“TPH”) reporting duties when certain required reporting information is unknown. The text of the proposed rule change is available on the Exchange’s Web site (<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

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to amend Rule 6.51 related to trade (or "transaction") reporting to provide guidance on TPH reporting duties when certain required reporting information is unknown at the time a TPH systematizes orders pursuant to Rule 6.24 or reports a trade pursuant to Rule 6.51. The Exchange is also proposing to delete outdated language in Rule 6.51. Finally, the Exchange is proposing to amend Rule 6.67 to reference any trade record updates that may occur as a result of the changes to Rule 6.51.

Background

Rule 6.24

Pursuant to Rule 6.24, each order, cancellation of, or change to an order transmitted to the Exchange must be "systematized", in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the floor of the Exchange. An order is systematized if an order is sent electronically to the Exchange; or if an order sent to the Exchange non-electronically, is input electronically into the Exchange's systems contemporaneously upon receipt on the Exchange, and prior to representation of an order. With respect to non-electronic, market and marketable orders sent to the Exchange, the TPH responsible for systematizing the order is required to input into the Exchange's systems at least the following specific information with respect to the order prior to representation of the order: (1) The option symbol; (2) the expiration month; (3) the expiration year; (4) the strike price; (5) buy or sell; (6) call or put; (7) the number of contracts; and (8) the Clearing Trading Permit Holder. Rule 6.24 further provides that any additional information with respect to the order shall be input into the Exchange's systems contemporaneously upon receipt, which may occur after the representation and execution of the order.

Rule 6.51

In addition to the order reporting requirements of Rule 6.24, the Exchange requires trades to be reported after execution. Pursuant to Rule 6.51(a), "[a] participant in each transaction, to be

designated by the Exchange, must report or ensure the transaction is reported to the Exchange within 90 seconds of the execution in a form and manner prescribed by the Exchange so that trade information may be reported to time and sales reports" (or what is often referred to as "the tape"). Pursuant to Rule 6.51(b), a TPH is also required to report trades, as promptly as possible, to the TPH for whom such transaction was made and/or the TPH that will clear such a transaction in a form and manner prescribed by the exchange. Rule 6.51.01 establishes procedures for reporting trades pursuant to Rule 6.51(a) and (b). The procedures include the submission of an account origin code for any agency record to be included in the transaction record. Typical origin codes include customer (C), broker-dealer (B) and market-maker (M).

Pursuant to Rule 6.51(d), the Exchange outlines certain trade information that must be reported to the Exchange in order for the Exchange to properly match and clear trades. The trade information required in Rule 6.51(d) includes the submission of whether the transaction was an opening or closing transaction (hereinafter referred to as "opening or closing status"). Rule 6.51.03, establishes procedures for reporting trades pursuant to Rule 6.51(d). Rule 6.51.03 states, in part, "For trades not executed on an electronic data storage medium, or electronic system, trade information shall be immediately recorded on a card or ticket and submitted as soon as reasonably possible, but not later than the maximum time period stated in Rule 2.30."

Rule 6.67

Rule 6.67 is related to the CBOE Trade Match System ("CTM") and specifies certain information on trade records that may be updated. The Rule states, in part, "The CBOE Trade Match System ("CTM") is a system in which authorized Trading Permit Holders may add and/or update trade records. CTM may be used to enter and report transactions that have been effected on the Exchange in accordance with the Exchange's rules or to correct certain bona fide errors."

Among the fields that can be changed by a TPH pursuant to Rule 6.67, are (1) opening or closing status and (2) the account origin code (subject to Exchange notification if the TPH is changing the origin code from customer (C) to any other origin code).

Operational Requirements Related to Rule 6.24 and 6.51

As noted above, Rule 6.24 provides that any additional information with respect to the order shall be input into the Exchange's systems contemporaneously upon receipt, which may occur after the representation and execution of the order. The Exchange, at an operational-level, currently requires certain data fields that must be entered into an Exchange-approved system before an order can be represented on the Exchange's trading floor. Those data fields include, not only those required by Rule 6.24, but also certain fields required by Rule 6.51 for trade reporting purposes and additional information, not related to Rule 6.24 or 6.51 that may be used to process an order. Though not required by Rule 6.24, those data fields the Exchange operationally requires of TPHs, at the time of systemization, include (1) account origin code, (2) opening or closing status and (3) time-in-force (*i.e.* an indication of how long an order will remain active before it is executed or expires).<sup>3</sup>

Proposed Changes

Rule 6.51

The Exchange is proposing to add Interpretation and Policy .04 to Rule 6.51. The proposed Rule 6.51.04 will specify what TPHs may enter in the event account origin code, opening or closing status, or time-in-force is not known at the time a TPH systematizes an order or reports a trade. In the event the information entered needs to be changed, the proposed rule specifies that it will be done via the CBOE Trade Match System ("CTM"). Proposed Rule 6.51.04 states:

If a Trading Permit Holder has no knowledge of the account origin code, opening or closing status or time-in-force of an order when the Trading Permit Holder systematizes the order pursuant to Rule 6.24 or reports a trade pursuant to Rule 6.51, as applicable, the Trading Permit Holder may use the following values when systematizing the order through an Exchange-approved device or reporting a transaction, respectively: (a) Either open or close, in the Trading Permit Holder's discretion (for opening or closing status); (b) broker-dealer (for account origin code); and (c) day (for time-in-force). The Trading Permit Holder may change any of these initial values via CTM, and must maintain records of any changes, pursuant to Rule 6.67.

<sup>3</sup> Time-in-force is not rule required order or transaction information but it is a data field that can be adjusted via CTM.

Pursuant to Rule 4.22, it remains the responsibility of the Trading Permit Holder to provide accurate trade information necessary for the reporting of a trade to time and sales reports or to allow the Exchange to properly match and clear trades. Any actions taken by the Exchange pursuant to this Interpretation and Policy .04 do not constitute a determination by the Exchange that an order was systematized or a trade was effected in conformity with the requirements of the Rules. Nothing in this Rule is intended to define or limit the ability of the Exchange to sanction or take other remedial action pursuant to other Rules for rule violations or other activity for which remedial measures may be imposed.

In addition to proposed Rule 6.51.04, the Exchange is eliminating outdated language in Rule 6.51.03 referencing Rule 2.30. Rule 2.30 was deleted in 2005.<sup>4</sup>

#### Rule 6.67

The Exchange is also proposing changes to Rule 6.67 to reference that transaction records may be updated via CTM pursuant to proposed Rule 6.51.04.

#### Analysis

As stated in proposed Rule 6.51.04, it will remain the responsibility of the Trading Permit Holder to provide accurate trade information necessary for the reporting of a trade to the Clearing Corporation. Any changes to be made to account origin code, opening or closing status, or time-in-force will have to be entered via post trade adjustment in CTM in accordance with Rule 6.67. The Exchange is not changing any current requirement of Rule 6.24, 6.51, or any of the transaction reporting procedures outlined therein (other than the aforementioned removal of outdated language). The purpose of the proposed rule change is only to specify what may be done in the event account origin code, opening or closing status, or time-in-force is not known at the time an order is systematized or a transaction is reported. The additional guidance is necessary due to the fact that operationally, account origin code, opening or closing status, or time-in-force cannot be left blank when an order is systematized pursuant to Rule 6.24 or a transaction is reported pursuant to Rule 6.51. Furthermore, the Exchange has always allowed post-trade updates to transaction records via CTM or otherwise. The proposed rule change

will have no effect on how transaction records are updated or maintained.

Neither the Exchange's audit trail nor its ability to properly match and clear trades will be adversely effected. Furthermore, account origin code, opening or closing status and time-in-force do not appear on time and sales reports, so any near real-time transaction information publically disseminated by the Exchange will not be effected. Finally, because order information related to account origin code will be defaulted to broker-dealer, orders entered pursuant to proposed Rule 6.51.04 will not be afforded any undue priority over any other resting order pursuant to Rule 6.45, Rule 6.45A or 6.45B.

In connection with this filing, the Exchange reviewed December 2016 order data from the Exchange floor. Of the 48,599 orders that traded on the exchange floor in December 2016, the Exchange noted that 17 (.03%) appeared to have had the origin code changed post-trade. Accordingly, the Exchange believes that it is rare today for an order to change from broker-dealer to customer. Furthermore, the Exchange believes that most Exchange brokers know when an order they handling is for a customer and they mark it accordingly. Finally, the Exchange notes that customers are able to choose their brokers and to the extent any customer feels that it did not get a good order fill as the result of a broker's actions, including the origin-code marking of an order, such customer may have recourse through their broker.

The proposed Rule also states that TPHs remain responsible for reporting accurate trade information and that any actions taken by the Exchange pursuant to Rule 6.51.04 do not constitute a determination that an order was otherwise systematized or reported in accordance with the Rules. For example, CBOE's action to allow TPHs to initially enter default values and make a later change via CTM, as necessary, should not be construed as a determination by the Exchange that the associated order or any resulting transaction proposed is in conformity with Exchange Rules. The proposed rule is not intended to be a form of regulatory relief and specifically notes it will not define or limit the Exchange's ability to sanction TPH for violations of Exchange rules.

The Exchange is basing this rule change on order entry requirements already in place on the NYSE Amex Options Floor ("NYSE Amex"). Pursuant to a Regulatory Floor Bulletin issued in 2013, NYSE Amex allows "default values" to be used for account origin code, opening or closing status

and time-in-force when entering an order.<sup>5</sup> While the NYSE Amex has used close as a default value for opening or closing status, the proposed rule use of either open or close, in the Trading Permit Holder's discretion. This alternative is used because some Exchange TPHs prefer to use the close default value that is also used on the AMEX Floor (where some TPHs are also a member or participant), while other TPHs prefer to use the open default value because their order entry systems are programed to reject opening orders that violate Exchange Rules.

#### 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.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that giving TPHs clarity on how account origin code, opening or closing status, or time-in-force should be entered at the time orders are systematized or trades are reported (and in the event that information is unknown) will help remove impediments to and perfect the mechanism of a free and open market in that it will allow for faster and more efficient processing of orders for both TPHs and their customers. The Exchange has always allowed updates to trade records, and any record updates that occur as a result of the proposed rule will not have a negative impact on the Exchange's audit trail or the near

<sup>5</sup> See Regulatory Floor Bulletin RBO-AMEX-13-02, April 2, 2013.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> *Id.*

<sup>4</sup> See Securities Exchange Act Release No. 52824 (November 22, 2005), 70 FR 72318 (December 2, 2005) (SR-CBOE-2005-69).

real-time trade information disseminated publically.

In addition, the Exchange believes the proposed rule is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposed Rule states that TPHs remain responsible for reporting accurate trade information and that any actions taken by the Exchange pursuant to Rule 6.51.04 do not constitute a determination that an order was otherwise systematized or reported in accordance with the Rules. The proposed rule is not intended to be a form of regulatory relief and specifically notes it will not define or limit the Exchange's ability to sanction TPHs for violations of Exchange rules. The Exchange itself does not set any of the default values outlined in the proposed rule and the entry of order information remains the responsibility of TPHs. The Exchange monitors and surveils TPHs to ensure compliance with Exchange Rules, including Rule 6.51.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will not have any impact on intramarket competition as it applies equally to all TPH who are currently subject to requirements of Rule 6.51. Additionally, the proposed rule change outlines a voluntary method of handling orders and will not subject any individual TPH to additional burden.

Furthermore, the proposed rule is meant to ensure Exchange TPHs are able to handle and process orders in the same manner as members or participants of the NYSE Amex. As such, the proposed rule change will promote intermarket competition.

#### *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<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> 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 Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2017-024 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 No. SR-CBOE-2017-024. This file number should be included on the subject line if email 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 Web site (<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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

available for Web site 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 No. SR-CBOE-2017-024, and should be submitted on or before April 25, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80338]

### **Order Granting Application by MIAX PEARL, LLC for an Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference**

March 29, 2017.

MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") has filed with the Securities and Exchange Commission ("Commission") an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> from the rule filing requirements of Section 19(b) of the Exchange Act<sup>2</sup> with respect to certain rules of the Miami International Securities Exchange, LLC ("MIAX Options")<sup>3</sup> that the Exchange seeks to incorporate by reference. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person,

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78mm(a)(1).

<sup>2</sup> 15 U.S.C. 78s(b).

<sup>3</sup> The Commission notes that MIAX PEARL referred to the Miami International Securities Exchange, LLC as "MIAX Options" in its application for an exemption under Section 36(a)(1) of the Exchange Act. See Letter from Deborah L. Carroll, Associate General Counsel, MIAX PEARL, to Brent J. Fields, Secretary, Commission, dated February 17, 2017 ("Exemptive Request"). References herein to the rules of MIAX Options are to the rules of the Miami International Securities Exchange, LLC.