Service states that the addition is necessary due to changes in the non-discounted published postage for Express Mail International (EMI), Priority Mail International (PMI), and Global Express Guaranteed (GXG), as well as a new GEPS–NPR 3 model contract and accompanying financial model that differ from the GEPS–NPR 2 model contract and financial model. Request at 2–3. The Request has been assigned Docket No. MC2012–4.

The Postal Service contemporaneously filed a redacted version of the GEPS–NPR 3 model contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–8.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment 1—an application for non-public treatment of materials filed under seal;
- Attachment 2A—a redacted version of Governors' Decision No. 11–6;
- Attachment 2B—a revised version of MCS 2510.8 GEPS–NPR;
- Attachment 2C—a redacted version of Management's Analysis of the Prices and Methodology for Determining Prices For Negotiated Service Agreements Under Global Expedited Package Services—Non-Published Rates 3;
- Attachment 2D—a list of Maximum and Minimum Prices for EMI, PMI, and GXG under GEPS–NPR 3 Contracts;
- Attachment 2E—a certified statement concerning prices for applicable negotiated service agreements under GEPS–NPR 3 rates, as required by 39 CFR 3015(c)(2);
- Attachment 3—a Statement of Supporting Justification similar to the Statement of Supporting Justification used to support the classification of GEPS–NPR 1, and as required by 39 CFR 3020.32;
- Attachment 4—a redacted version of the GEPS–NPR 3 model contract.

In the Statement of Supporting Justification, Frank Cebello, Executive Director, Global Business Management, asserts that the product is designed to increase the efficiency of the Postal Service's process, as well as enhance its ability to compete in the marketplace. *Id.,* Attachment 3 at 1. Mr. Cebello states that the product is designed to enable the Postal Service's Global Business sales force to rapidly establish, based on various factors, whether a GEPS-type agreement will be profitable enough to justify establishing an incentive-based mailing plan with the customer for EMI, PMI, and GXG if the customer uses Global Shipping Software. *Id.,* Attachment 3 at 2. In order to accomplish this, the product revises the product designs for GEPS–NPR 1 and GEPS–NPR 2 to include actual rates that will cover their costs, and will eliminate the need for each customer agreement to be added to the competitive products list individually. *Id.* Attachment 3 at 2, 5. Mr. Cebello contends that the product is not subsidized by market dominant products, it covers costs attributable to it, and it does not cause competitive products as a whole to fail to make the appropriate contribution to institutional costs. *Id.* The Postal Service asserts that the model contract is supported by Governors' Decision No. 11–6, which authorizes management to prepare any necessary product description of non-published competitive services, including text for inclusion in the MCS, and to present the matter to the Commission for review. *Id.* at 3.

Related contract. The Postal Service included a redacted version of the related model contract with the Request. *Id.* Attachment 4. The Postal Service will notify the customer of the effective date no later than 30 days after receiving the signed agreement from the mailer. *Id,* Attachment 4 at 6. The contract will expire 1 year from the effective date unless terminated sooner. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment 4.

The Postal Service filed much of the supporting materials, including the related model contract, under seal. *Id.* Attachment 1. It maintains that the redacted portions of the materials should remain confidential as sensitive business information. *Id.* at 4. This information includes sensitive commercial information concerning the incentive discounts and their formulation, applicable cost-coverage, non-published rates, as well as some customer-identifying information. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure for ten years after the date of filing with the Commission, unless an order is entered to extend the duration of that status. *Id.* at 9.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–4 and CP2012–8 to consider the Request pertaining to the proposed Priority Mail Contract 37 product and the related model contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 6, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–4 and CP2012–8 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than January 6, 2012.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–33712 Filed 1–3–12; 8:45 am]

BILLING CODE 7710–FW–P

Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, December 20, 2011 (Request).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66052; File No. SR–CBOE–2011–123]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to FLEX Options

December 23, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

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

[2] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

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

The Exchange is proposing to adopt certain rules pertaining to the electronic auction trading of Flexible Exchange Options (''FLEX Options'') on the Exchange's FLEX Hybrid Trading System platform.[3] The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange is proposing to make modified versions of the Automated Improvement Mechanism (''AIM'') and Solicitation Auction Mechanism (''SAM'')—which are currently available for non-FLEX Options under Rules 6.74A and 6.74B, respectively—available for FLEX Options. The FLEX versions of the AIM and SAM mechanisms will operate substantially similar to the AIM and SAM mechanisms for non-FLEX Options. Significant distinctions are described below.[4]

Automated Improvement Mechanism

The Exchange is proposing to establish an AIM mechanism for FLEX Options, which mechanism will electronically auction certain orders for price improvement. Under the AIM process, a FLEX Trader[5] (referred to as an ''Initiating Trading Permit Holder'' or ''Initiating TPH'') that represents agency orders may submit an order it represents as agent (an ''Agency Order'') along with a second order (a principal order and/or solicited order(s) for the same amount as the Agency Order)[6] into the AIM Auction where other FLEX Trader participants could compete with the Initiating TPH's second order to execute against the Agency Order.

To be eligible, the Agency Order must be in a FLEX class designated as eligible for AIM Auctions and within the designated AIM Auction order eligibility size parameters. Such classes and size parameters will be determined by the Exchange and announced via circular to FLEX Traders. When submitting an Agency Order, an Initiating TPH must mark the Agency Order for AIM Auction processing and must also submit a contra-side second order for the same size as the Agency Order. This second order guarantees that the Agency Order will receive an execution (*i.e.,* it acts as a stop). In connection with the stop of the Agency Order, the Initiating TPH must stop the entire Agency Order with the second order at the better of the best bid or offer (''BBO'') or the Agency Order's limit price.[7] The Initiating TPH may enter the second order in one of two formats: (i) A specified single price at which it seeks to cross the Agency Order with the second order (a ''single-priced submission''), or (ii) a non-price specific commitment for the second order to automatically match the price and size of all auction responses that are received during the auction (an ''auto-match''), in which case the Agency Order will be stopped at the better of the BBO or the Agency Order's limit price. When using the auto-match feature, the Initiating TPH would have no control over the ultimate match price. Once the Initiating TPH has submitted an Agency Order for AIM processing, such submission cannot be cancelled by the Initiating TPH.

Upon receipt of an Agency Order (and second order), the Exchange would commence the AIM Auction by issuing a request for responses (''RFR''), detailing the side and size of the Agency Order.[8] The duration of the RFR response period (*i.e.,* the auction period) would be established by the Exchange on a class-by-class basis and shall not be less than three (3) seconds.[9] During that period, RFR responses may be submitted by FLEX Traders. These responses must specify price and size and may not cross the Exchange's BBO on the opposite side of the market. All RFR responses are ''blind,'' that is they are not visible to any other participants.[10] CBOE believes this aspect of the AIM Auction will encourage more aggressive quoting and superior price improvement. RFR responses may be modified or cancelled so long as they are modified or

[3] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote (''RFQ'') System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform (referred to as the ''FLEX System'' or the ''System'') are contained in Chapter XXIVB.

[4] These distinctions are noted as compared to the existing AIM and SAM auction processes for non-FLEX options under Rules 6.74A and 6.74B, respectively. The Exchange notes that it currently has two separate rule change filings pending that would make amendments to Rule 6.74A (AIM). *See* SR–CBOE–2011–116 and SR–CBOE–2011–117.

[5] A ''FLEX Trader'' means a FLEX-participating Trading Permit Holder who has been approved by the Exchange to trade on the System. *See* Rule 24B.1(l).

[6] Any solicited orders submitted by the Initiating TPH to trade against the Agency Order may not be for the account of a FLEX Market-Maker assigned to the option class. *See* proposed Rule 24B.5A.04.

[7] By comparison, the AIM Auction for non-FLEX Options currently provides for a stop of Agency Orders for 50 contracts or more at the better of the national best bid or offer (''NBBO'') or the Agency Order's limit price (if the order is a limit order), and a stop of Agency Orders for less than 50 contracts at the NBBO improved by one minimum price increment (which is determined by the Exchange and may not be smaller than $0.01) or the Agency Order's limit price (if the order is a limit). *See* Rule 6.74A(a)(2)—(3). The FLEX provision differs in that orders of any size would be treated the same for purposes of the stop (*i.e.,* there would be no small order provision), the stop is based on the BBO (FLEX options are generally not multiply-listed and are not subject to a consolidated quotation reporting program), and the FLEX AIM Auction will only process Agency Orders with limit prices (no market orders).

[8] Each RFR would be sent to those FLEX Traders electing to receive RFRs (*i.e.,* those FLEX Traders who have established the necessary systems connectivity to receive RFRs). Thus, such election to receive RFRs would not be on a case-by-case basis.

[9] The Exchange is proposing that the minimum RFR exposure period for AIM be three (3) seconds, which is consistent with the existing minimum exposure period for FLEX Option crossing pursuant to the existing FLEX crossing procedures. *See* Rule 24B.5(b)(3)(iii). By comparison, for non-FLEX Options, the minimum RFR exposure period for non-FLEX Options is one (1) second. *See, e.g.,* Rule 6.45A.01 and .02, and Rule 6.74A(b)(1)(C).

[10] RFR responses will not be disseminated via the Options Price Reporting Authority (''OPRA''). This is consistent with the operation of AIM (and SAM) for non-FLEX Options. *See* Rules 6.74A(b)(1)(F) and 6.74B(b)(1)(D). In addition, it is consistent with the operation of FLEX generally. In that regard, the Exchange notes that the Exchange currently disseminates via OPRA information regarding executed FLEX transactions. However, the Exchange currently does not disseminate via OPRA information respecting pending electronic and open outcry RFQs, or information on resting orders in the FLEX electronic book.

cancelled before the conclusion of the RFR response period. Lastly, the minimum price increment for RFR responses and for an Initiating TPH's single price submission shall be set by the Exchange at no less than one cent.

Normally, an AIM Auction ends at the conclusion of the RFR response period (which will be no less than 3 seconds). However, the proposal provides that the AIM Auction would end prior to the conclusion of the RFR response period any time an RFR response matches the BBO on the opposite side of the market from the RFR responses.[11]

At the conclusion of the AIM Auction, the Agency Order would be allocated at the best price(s) and contra-side interest will be ranked and matched based on price-time priority,[12] subject to the following: First, such best prices may include non-AIM Auction FLEX Orders (to the extent the Exchange has determined to make available an electronic book).[13] Second, public customers and non-Trading Permit Holder broker-dealers RFR responses and FLEX Orders would have priority.[14] Third, no FLEX Appointed Market-Maker participation entitlement [15] would apply with respect to the AIM Auction. Fourth, if the best price equals the Initiating TPH's single-price submission, the Initiating TPH's single-price submission shall be allocated the greater of one contract or a certain percentage of the order, which percentage would be determined by the Exchange and may not be larger than 40%. However, if only one other FLEX Trader matches the Initiating TPH's single price submission, then the Initiating TPH may be allocated up to 50% of the order. Fifth, if the Initiating TPH selected the auto-match option of the AIM Auction, the Initiating TPH shall be allocated its full size at each price point until a price point is reached where the balance of the order can be fully executed. At such price point, the Initiating TPH shall be allocated the greater of one contract or a certain percentage of the remainder of the Agency Order, which percentage would be determined by the Exchange and may not be larger than 40%. Sixth, any remaining RFR responses and FLEX Orders will be allocated based on time priority.[16] The Initiating TPH would not participate on any such balance unless the Agency Order would otherwise go unfilled. Finally, seventh, if the final AIM Auction price locks a public customer or non-Trading Permit Holder broker-dealer order in the electronic book on the same side of the market as the Agency Order, then, unless there is sufficient size in the AIM Auction responses to execute both the Agency Order and the booked public customer or non-Trading Permit Holder broker-dealer order (in which case they will both execute at the final AIM Auction price), the Agency Order will execute against RFR responses at one minimum RFR response increment worse than the final AIM Auction price against the AIM Auction participants that submitted the final AIM Auction price and any balance shall trade against the public customer or non-Trading Permit Holder broker-dealer order in the book at such order's limit price.[17]

Lastly, the Exchange proposes certain interpretation and policy provisions applicable to the AIM Auction mechanism. First, the AIM Auction may only be used where there is a genuine intention to execute a bona fide transaction. Second, it would be deemed conduct inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1 to engage in a patter [sic] of conduct where the Initiating TPH breaks-up an Agency Order into separate orders for two (2) or few contracts for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures.[18] Third, initially,

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[11] This early termination provision for FLEX Options is consistent with the operation of AIM (and SAM) for non-FLEX Options. *See* Rules 6.74A(b)(2)(D) and 6.74B(b)(2). The Exchange notes that, for non-FLEX Options, additional early termination provisions apply that would not be applicable to FLEX Options. In particular, for non-FLEX Options an auction may terminate early: (i) Upon receipt by the Hybrid System of an unrelated order (in the same series as the Agency Order) that is marketable against either Exchange's disseminated quote (when such quote is the NBBO) or the RFR responses; (ii) upon receipt by the Hybrid System of an unrelated limit order (in the same series as the Agency Order and on the opposite side of the market as the Agency Order) that improves the RFR responses; (iii) pursuant to a pilot program, any time there is a quote lock on the Exchange pursuant to Rule 6.45A(d) and .06. Provisions (i) and (ii) above would not be applicable to FLEX Options because unrelated FLEX Orders may not be submitted to the electronic book for the duration of an AIM Auction. *See* proposed Rule 24B.5A(b). Provision (iii) above (and related pilot program data reporting requirements) would not be applicable to FLEX Options because there is no quote lock provision for FLEX Options that is similar to the quote lock provision applicable to non-FLEX Options under Rule 6.45A(d).

[12] The FLEX version of the AIM Auction would only utilize a price-time priority allocation algorithm, subject to the conditions noted above. By comparison, the allocation algorithm for the non-FLEX version of the AIM Auction is the algorithm that is in effect for the option class, subject to certain conditions. *See* Rule 6.74A(b)(3).

[13] The Exchange may determine in a class-by-class basis to make an electronic book available in the FLEX System. *See* Rule 24B.5(b). The term "FLEX Order" refers to (i) FLEX bids and offers entered by FLEX Market-Makers and (ii) orders to purchase and orders to sell FLEX Options entered by FLEX Traders, in each case into the electronic book. *See* Rule 24B.1(j).

[14] For the non-FLEX Option version of AIM, only public customers have priority. *See* Rule 6.74A(b)(3)(B). The Exchange is proposing to provide both public customers and non-Trading Permit Holder broker-dealers with the same priority for the FLEX AIM Auction for simplicity to be consistent with how other FLEX allocation algorithms currently operate. *See, e.g.,* Rule 24B.5(a)(1)(iii)(C) and (D). In the future, the Exchange may determine to modify the FLEX Option version of AIM so that only public customers have priority. Such a modification would be the subject of a separate rule filing.

[15] The Exchange may establish from time to time a participation entitlement formula that is applicable to FLEX Appointed Market Makers on a class-by-class basis with respect to open outcry RFQs, electronic RFQs and/or electronic book transactions. Any such FLEX Appointed Market-Maker participation entitlement shall: (i) Be divided equally by the number of FLEX Appointed Market-Makers quoting at the BBO or BBO clearing price, as applicable; (ii) collectively be no more than: 50% of the amount remaining in the order when there is one other FLEX Market-Maker also quoting at the same price, 40% when there are two other FLEX Market-Makers also quoting at the same price; and 30% when there are three or more FLEX Market-Makers also quoting at the same price; and (iii) when combined with any crossing participation entitlement, shall not exceed 40% of the original order. *See* Rule 24B.5(d)(2)(ii).

[16] For the non-FLEX Option version of AIM, the allocation is based on the algorithm in effect for the option class. *See* note 12, *supra.*

[17] For the non-FLEX Option version of AIM, this book locking provision is only applicable to public customer orders resting in the book. The Exchange is proposing to provide both public customers and non-Trading Permit Holder broker-dealers with the same priority for the FLEX AIM Auction for simplicity to be consistent with how other FLEX allocation algorithms currently operate. *See* note 12, *supra.* The Exchange notes that, for non-FLEX Options, additional conditions apply that will not be applicable to FLEX Options. Those conditions relate to scenarios involving the following: (i) Unrelated orders that cause early terminations of AIM Auctions; and (ii) auctions that do not result in price improvement over the Exchange's disseminated price at the time the Auction began (in which case resting unchanged quotes or orders that were disseminated at the best price before the auction began have priority after any public customer order priority and the Initiating TPH's priority (40%) have been satisfied; any unexecuted balance on the Agency Order is allocated to RFR responses provided those RFR responses will be capped to the size of the unexecuted balance and the Initiating TPH may not participate on any such balance unless the Agency Order would otherwise go unfilled). *See* Rule 6.74A(b)(3)(D), (E) and (H). Provision (i) above would not be applicable to FLEX Options because unrelated FLEX Orders may not be submitted to the electronic book for the duration of an AIM Auction. *See* proposed Rule 24B.5A(b). Provision (ii) above is not necessary for FLEX Options because FLEX Options will utilize a price-time allocation algorithm (and, as a result, resting FLEX Orders that are disseminated at the best price before an AIM Auction begins will have priority after public customer and non-Trading Permit Holder broker-dealer priority and the Initiating TPH's priority (40%) have been satisfied by virtue of the resting FLEX Orders having time priority).

[18] The non-FLEX version of AIM contains the same prohibition. In addition, the non-FLEX version of AIM provides that a pattern or practice of submitting unrelated orders that cause an auction to conclude before the end of the RFR period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule

and for at least a pilot period expiring on July 18, 2012, there will be no minimum size requirement for orders to be eligible for the AIM Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is a meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the AIM Auction. Any data which is submitted to the Commission will be provided on a confidential basis.[19] Fourth, any solicited orders submitted by the Initiating TPH to trade against the Agency Order may not be for the account of a FLEX Market-Maker assigned to the option class.[20] Fifth, the Exchange may determine on a class-by-class basis to make the AIM Auction available for complex orders. In such classes, complex orders may be executed through the AIM Auction at a net debit or net credit price provided the AIM Auction eligibility requirements are satisfied and the Agency Order is eligible for the AIM Auction considering its complex order type, order origin code (*i.e.,* non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange), class, and marketability as determined by the Exchange. Complex orders will only be eligible to trade with other complex orders through the AIM Auction. To the extent the Exchange determines to make an electronic book available for resting FLEX Orders, there will be no ''legging'' of complex orders with FLEX Orders that may be represented in the individual series legs represented in the electronic book.[21] Order allocation shall be the same as would be applicable for simple orders. In addition, the individual series legs of a complex order would not trade through equivalent bids (offers) in the individual series legs represented in the electronic book and at least one leg must better the corresponding bid (offer) of public customers and non-Trading Permit Holder broker-dealers in the electronic book. Sixth, any determinations made by the Exchange pursuant to the proposed rule, such as eligible classes, order size parameters and the minimum price increment, would be communicated in a circular.[22]

Solicitation Auction Mechanism

The Exchange is also proposing to establish a SAM mechanism for FLEX Options, which is another mechanism that will electronically auction certain orders for price improvement. Under the SAM process, an Initiating TPH that represents agency orders may submit an Agency Order along with a second order (a solicited order(s) for the same amount as the Agency Order) [23] into the SAM Auction where other FLEX Trader participants could compete with the Initiating TPH's second order to execute against the Agency Order. As explained in more detail below, the SAM mechanism is to be used for larger-sized Agency Orders that are to be executed against solicited orders.

To be eligible, the Agency Order must be in a FLEX class designated as eligible for SAM Auctions and within the designated SAM Auction order eligibility size parameters determined by the Exchange (however, the eligible order size would not be less than 500 contracts). Such classes and size parameters will be determined by the Exchange and announced via circular to FLEX Traders. As explained in more detail below, each order entered into the SAM Auction would also be designated in the System as all-or-none (*i.e.,* an order will be executed in its entirety or not at all). In addition, the second order may only be entered in a single-priced submission format (*i.e.,* unlike AIM Auctions, there is no ''auto-match'' feature for SAM Auctions). Once the Initiating TPH has submitted an Agency Order for SAM processing, such submission cannot be cancelled by the Initiating TPH.

Upon receipt of an Agency Order (and second order), the Exchange would commence the SAM Auction by issuing an RFR, detailing the price and size [sic] the Agency Order.[24] The duration of the RFR response period (*i.e.,* the auction period) would be established by the Exchange on a class-by-class basis and shall not be less than three (3) seconds.[25] During that period, RFR responses may be submitted by FLEX Traders. These responses must specify price and size. Responses may not be entered for the account of an options Market-Maker from another options exchange. As with AIM Auctions, for SAM Auctions all RFR responses are ''blind.'' [26] CBOE believes this aspect of the SAM Auction will encourage more aggressive quoting and superior price improvement. RFR responses may be modified or cancelled so long as they are modified or cancelled before the conclusion of the RFR response period. Lastly, the minimum price increment for RFR responses and for an Initiating TPH's single price submission shall be set by the Exchange at no less than one cent.

Normally, a SAM Auction ends at the conclusion of the RFR response period (which will be no less than 3 seconds). However, as with AIM Auctions, the proposal provides that the SAM Auction would end prior to the conclusion of the RFR response period any time an RFR response matches the BBO on the opposite side of the market from the RFR responses.[27]

At the conclusion of the SAM Auction, the Agency Order would be executed against the second/solicited order unless there is sufficient size to execute the entire Agency Order at a price (or prices) that improves the proposed crossing price. In the case where there is one or more public customers or non-Trading Permit Holder broker-dealers at the proposed execution price on the opposite side of the Agency Order, the second/solicited order would be cancelled and the Agency Order would be executed

4.1. *See* Rule 6.74A.02. This ''unrelated orders'' provision would not be applicable to FLEX Options because unrelated FLEX Orders may not be submitted to the electronic book for the duration of an AIM Auction. *See* proposed Rule 24B.5A(b).

[19] This proposed pilot is modeled after an existing pilot for non-FLEX Options. The July 18, 2012 date is proposed so that the FLEX pilot will coincide with an existing pilot for non-FLEX Options. *See* Rule 6.74A.03.

[20] *See* note 6, *supra.*

[21] By comparison, for complex orders in non-FLEX Options classes, the AIM (and SAM) mechanisms permit complex orders to trade with the individuals series legs in the electronic book. *See* Rules 6.74A.07 and 6.74B.01.

[22] The non-FLEX Option version of AIM also contains a provision for the automated customer-to-customer immediate crosses. *See* Rule 6.74A.08. The Exchange does not intend to make this automated crossing functionality available at this time for FLEX Options. If in the future the Exchange would determine to do so, it would be the subject of a separate rule filing.

[23] Any solicited orders submitted by the Initiating TPH to trade against the Agency Order may not be for the account of a FLEX Market-Maker assigned to the option class. *See* proposed Rule 24B.5B.03.

[24] As with AIM Auctions, for SAM Auctions each RFR would be sent to those FLEX Traders electing to receive RFRs (*i.e.,* those FLEX Traders who have established the necessary systems connectivity to receive RFRs). Thus, such election to receive RFRs would not be on a case-by-case basis.

[25] As with AIM Auctions, the Exchange is proposing that the minimum RFR exposure period for SAM be three (3) seconds, which is also consistent with the existing minimum exposure period for FLEX Option crossing pursuant to the existing FLEX crossing procedures. *See* Rule 24B.5(b)(3)(iii). By comparison, for non-FLEX Options, the minimum RFR exposure period for non-FLEX Options is one (1) second. *See, e.g.,* Rule 6.45A.02, and Rule 6.74B(b)(1)(C).

[26] *See* note 10, *supra.*

[27] This early termination provision for FLEX Options is consistent with the operation of AIM and SAM for non-FLEX Options. As noted above, for non-FLEX Options, additional early termination provisions apply that would not be applicable to FLEX Options. *See* note 11, *supra.*

against other bids (offers) if there is sufficient size at the bid (offer) to execute the entire size of the Agency Order (size would be measured considering RFR responses and resting FLEX Orders, to the extent the Exchange has determined to make available an electronic book)). If there is not sufficient size to execute the entire Agency Order, the proposed cross would not be executed and both the Agency Order and second/solicited order would be cancelled. Additionally, the proposed cross would not be executed and both the Agency Order and second/solicited order would be cancelled if the execution price would be inferior to the BBO.

In the event the Agency Order is executed at an improved price(s) or at the proposed execution price against RFR responses and FLEX Orders, the allocation at a given price would be as follows: (i) RFR responses and FLEX Orders for the account of public customers and non-Trading Permit Holder broker-dealers will participate in the execution based on time priority; (ii) any RFR responses and FLEX Orders that are subject to a FLEX Appointed Market-Maker participation entitlement will participate in the execution based on a participation entitlement formula specified in Rule 24B.5(d)(2)(ii); [28] then (iii) all other RFR responses and FLEX Orders will participate in the execution based on time priority.

Lastly, the Exchange proposes certain interpretation and policy provisions applicable to the SAM Auction mechanism. First, the Exchange is also proposing to apply the SAM Auction mechanism to complex orders. As proposed, the Exchange may determine on a class-by-class basis to make the SAM Auction available for complex orders. In such classes, complex orders may be executed through the SAM Auction at a net debit or net credit price provided the SAM Auction eligibility requirements are satisfied and the Agency Order is eligible for the SAM Auction considering its complex order type, order origin code (*i.e.,* non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange), class, and marketability as determined by the Exchange. Complex orders will only be eligible to trade with other complex orders through the SAM Auction. To the extent the Exchange determines to make an electronic book available for resting FLEX Orders, there will be no ''legging'' of complex orders with FLEX Orders that may be represented in the individual series legs represented in the electronic book.[29] Order allocation shall be the same as would be applicable for simple orders. In addition, the individual series legs of a complex order would not trade through equivalent bids (offers) in the individual series legs represented in the electronic book and at least one leg must better the corresponding bid (offer) of public customers and non-Trading Permit Holder broker-dealers in the electronic book. Second, the proposed rule would also require Trading Permit Holders to deliver to customers a written document describing the terms and conditions of the SAM Auction mechanism prior to executing Agency Orders using the SAM Auction mechanism. Such written document would be required to be in a form approved by the Exchange.[30] Third, the proposed rule would also specify that Trading Permit Holders may not use the SAM Auction mechanism to circumvent the Exchange's rules limiting principal order transactions.[31] Additionally, the Exchange notes that for purposes of paragraph (e) to Rule 6.9, which paragraph prohibits anticipatory hedging activities prior to the entry of an order on the Exchange, the terms of an order would be considered ''disclosed'' to the trading crowd on the Exchange when the order is entered into the SAM Auction mechanism. Finally, fourth, any determinations made by the Exchange pursuant to the proposed SAM Auction rule, such as eligible classes, order size parameters and the minimum price increment, would be communicated in a circular.

Section 11(a)(1) of the Act

Finally, the Exchange believes the proposed AIM and SAM Auctions for FLEX Options are consistent with Section 11(a)(1) of the Act [32] 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),[33] the ''G'' exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder,[34] and ''Effect vs. Execute'' exemption under Rule 11a2–2(T) under the Act.[35] In this regard, we note that, Trading Permit Holders effecting transactions through the AIM and SAM Auctions and relying on the G exemption would yield priority to any public customer and non-TPH broker-dealer interest pursuant to the applicable allocation algorithms.

The Exchange also believes the proposed AIM and SAM Auctions meet the requirements of the Effect vs. Execution exemption under Rule 11A2–2(T). Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions directly on the exchange floor. To comply with the rule's conditions, a member (i) must transmit the order from off the exchange floor, (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution,[36] (iii) may not be affiliated with the executing member, and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule.

Off-Floor Transmission: The requirement in Rule 11a2–2(T) for orders to be transmitted from off the exchange floor reflects Congress' intent that Section 11(a) should operate to put member money managers and non-member money managers on the same footing for purposes of their transactions for covered accounts. In considering other automated systems, the Commission and the staff have stated that the off-floor transmission requirement would be met if a covered account order is transmitted from off the

[28] *See* note 15, *supra.*

[29] *See* note 21, *supra.*

[30] This provision is the same as a provision in the SAM rule for non-FLEX Options. *See* Rule 6.74B.02. The Exchange proposes that the same notification used for Rule 6.74B may be used to satisfy the notification required under proposed Rule 24B.5B.02.

[31] *See* Rule 24B.5.

[32] 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

[33] 15 U.S.C. 78k(a)(1)(A).

[34] 15 U.S.C. 78k(a)(1)(G) and 17 CFR 240.11a1–1(T).

[35] 17 CFR 240.11a2–2(T).

[36] The member may, however, participate in clearing and settling the transaction.

floor directly to the exchange floor by electronic means.[37] To the extent that orders and responses to AIM and SAM Auctions will be electronically submitted directly to the FLEX System from remote terminals, the Exchange believes the orders and responses transmitted for execution through AIM and SAM Auctions satisfy the off-floor transmission requirement.

Non-Participation in Order Execution and Execution Through Unaffiliated Member: Rule 11a2–2(T) further provides that the exchange member and its associated persons may not participate in the execution of a transaction once the order has been transmitted to the exchange floor. This requirement was included to prevent members with their own brokers on the exchange floor from using those persons to influence or guide their orders' execution. This requirement does not preclude members from canceling or modifying orders, or from modifying the instructions for executing orders, after they have been transmitted to the floor. Such cancellations or modifications, however, also must be transmitted from off the exchange floor.[38]

In a release discussing both the COMEX and the PACE systems, the Commission noted that a member relinquishes any ability to influence or guide the execution of its order at the time the order is transmitted into the systems and, although the execution is automatic, the design of these systems insures that members do not posses any special or unique trading advantages in handling orders after transmission to the trading floor.[39] Similarly, orders and responses submitted to AIM and SAM Auctions will enter the FLEX System and be executed based on an established matching algorithm. To the extent that users of the AIM and SAM Auctions will relinquish control of their orders and responses upon transmission to the FLEX System, and will not be able to influence or guide the execution of their orders, the Exchange believes that this requirement is met with respect to orders and responses that are executed automatically through the AIM and SAM Auctions.

Furthermore, although Rule 11a2–2(T) contemplates having an order executed by an exchange member who is unaffiliated with the member initiating the order, the Commission has recognized that this requirement is not applicable when automated exchange facilities are used. For example, in considering the operation of COMEX and PACE, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange floors, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T).[40] Similarly, to the extent that the design of the AIM and SAM Auctions ensure that members do not possess any special or unique trading advantages in the handling of their orders after transmission, a member effecting a transaction through the AIM and SAM Auctions satisfies the requirement for execution through an unaffiliated member.

Non-Retention of Compensation for Discretionary Accounts: The Exchange notes that members who intend to rely on Rule 11a2–2(T) in connection with transactions using the AIM and SAM Auctions must comply with the requirements of Section (a)(2)(iv) of the rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[41] in general, and furthers the objectives of Section 6(b)(5) of the Act,[42] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In particular, the Exchange believes that the use of FLEX Options provide CBOE Trading Permit Holders and investors with additional tools to trade customized options in an exchange environment[43] and greater opportunities to manage risk. The Exchange believes that making modified versions of the AIM and SAM mechanisms available for FLEX Options should serve to further those objectives and encourage use of FLEX Options by enhancing the existing processes for auctioning FLEX Orders, which should make the system more efficient and effective for the FLEX Option investor community.

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.

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 proposal.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

[37] *See, e.g.,* Securities Exchange Act Release Nos. 29237 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); Securities Exchange Act Release No. 15533 (January 29, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX's Communications and Execution System, and the Phlx's Automated Communications and Execution System) and 14563 (March 14, 1978) (regarding the NYSE's Designated Order Turnaround System); see also Letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Edith Hallahan, Associate General Counsel, Phlx (March 24, 1999) (regarding Phlx's VWAP Trading System); Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to David E. Rosedahl, PCX (November 30, 1998) (regarding OptiMark); Letter from Brandon Becker, Director, Division of Market Regulation, SEC, to George T. Simon, Foley & Lardner (November 30, 1994) (regarding Chicago Match).

[38] Securities Exchange Act Release No. 14563 (March 14, 1978).

[39] Securities Exchange Act Release No. 15533 (January 29, 1979) at n. 25.

[40] *Id.*

[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(5).

[43] FLEX Options provide Trading Permit Holders and investors with an improved but comparable alternative to the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same restrictions. The Exchange believes that making these changes will make the FLEX Hybrid Trading System an even more attractive alternative when market participants consider whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Options.

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.* Please include File Number SR–CBOE–2011–123 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–123. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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–2011–123 and should be submitted on or before January 25, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33713 Filed 1–3–12; 8:45 am]

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[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66061; File No. SR–CHX–2011–34]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Regarding Suspension of a Participant's Trading Privileges on the Exchange

December 28, 2011.

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 December 16, 2011, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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

CHX proposes to add Interpretation and Policy .01 to Article 13, Rule 2 (Emergency Suspension) regarding the suspension of a Participant's trading privileges on the Exchange. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 proposes to add Interpretation and Policy .01 to Article 13, Rule 2 (Emergency Suspension) thereunder (''Rule 2'') regarding the suspension of a Participant's trading privileges on the Exchange. Currently, this Rule authorizes the Exchange's Chief Regulatory Officer (''CRO'') to suspend a Participant's membership with the Exchange or place other limitations on its activities if various circumstances occur, such as insolvency, failure to perform its contracts or obligations, expulsion or suspension by another self-regulatory organization or where it reasonably appears that the Participant is violating and will continue to violate any provision of the Rules of the Exchange or the federal securities laws (or rules promulgated thereunder). The Exchange proposes to permit any Officer of the Exchange designated by the CRO to suspend the trading privileges of a Participant on the Exchange's facilities pursuant to the provisions of Rule 2 if a Qualified Clearing Agency refuses to act to clear and settle the trades of that Participant. The CRO must approve any such suspensions within two (2) days of the action. If the Chief Regulatory Officer does not approve the action taken, the suspension shall be immediately lifted as of the time of his or her decision or after the expiration of two days, whichever is earlier. Suspensions pursuant to these provisions, including the appeal thereof, would otherwise be governed by the provisions of Article 13, Rule 2.

The recent actions taken with respect to MF Global, Inc. (''MF Global'') illustrate the need for a limited expansion of the emergency suspension authority of Rule 2 in the situation where the Qualified Clearing Agency is considering whether to continue to act for a Participant in the clearance and settlement of trades.[3] On October 31, 2011, there were public news reports that MF Global was in financial difficulties and might be insolvent. On that day, NSCC stated that it would continue to honor the transactions of MF Global presented to it for clearance and settlement. After the close of trading that day, however, NSCC stated that it would cease to act for MF Global and the Exchange's CRO suspended the trading privileges of the firm pursuant to Article 13, Rule 2 effective November 1, 2011.[4]

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

[2] 17 CFR 240.19b–4.

[3] Currently, there is only one Qualified Clearing Agency, the National Securities Clearing Corp. (''NSCC''), for cash equities securities.

[4] *See* CHX Market Regulation Department Information Memorandum MR–11–19 (Nov. 1, 2011), available on CHX public Web site, *http://www.chx.com. See also* NSCC Notice A#7314, Re: MF Global, Inc. (Nov. 1, 2011), available on its public Web site at *http://www.dtcc.com/downloads/legal/imp_notices/2011/nscc/a7314.pdf.*