

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79981; File No. SR-CBOE-2017-009]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Allocation and Priority Rules

February 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on January 24, 2017, Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

CBOE proposes to amend its rules related to the allocation and priority of orders and quotes. 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 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

CBOE proposes to amend its rules related to the allocation and priority of orders and quotes to combine the rules related to allocation and priority into a single rule. Additionally, the proposed rule change deletes obsolete and duplicative rule text and adds detail to certain provisions regarding current

System functionality. The proposed rule change also makes technical and nonsubstantive changes.

Currently, there are three separate rules that describe the general allocation and priority principles for trading on CBOE:

- Rule 6.45, which describes the priority and allocation of trades classes that do not trade on the Hybrid System (open outcry only);
- Rule 6.45A, which describes the priority and allocation of trades in equity classes that trade on the Hybrid System; and
- Rule 6.45B, which describes the priority and allocation of trades in index and exchange-traded fund (“ETF”) classes that trade on the Hybrid System.

The proposed rule change combines these three rules into a single proposed Rule 6.45 to create a single rule regarding allocation and priority for all classes. Currently, all classes trade on either the Hybrid or Hybrid 3.0 System, so it is no longer necessary to have a separate rule (current Rule 6.45) for non-Hybrid classes. Additionally, current Rules 6.45A and 6.45B include provisions related to the priority and allocation rules for open outcry trading and refer back to current Rule 6.45 for a description of other priority and allocation rules for open outcry trading. The proposed rule change deletes current Rule 6.45 and moves the applicable provisions regarding the priority of bids and offers in open outcry referenced in current Rules 6.45A and 6.45B to proposed Rule 6.45(b). Current Rules 6.45A and 6.45B are nearly identical, as priority and allocation rules for all classes that trade on the Hybrid System are the same (with a couple of minor differences for classes that trade on the Hybrid 3.0 System).<sup>5</sup> As there is no longer a distinction between priority and allocation of equity, index and ETF options, the Exchange does not believe it is necessary to maintain separate rules. The proposed rule change combines these rules into a single proposed Rule 6.45 entitled “Order and Quote Priority and Allocation” and deletes any rule text that relates to the separate rules.<sup>6</sup> The Exchange believes

<sup>5</sup> These differences are noted below and are included in the proposed rule. Currently, only options on the S&P 500 Index (SPX) trade on the Hybrid 3.0 platform.

<sup>6</sup> The proposed rule change amends cross-references to current Rules 6.45, 6.45A and 6.45B in Rules 1.1(fff) and (ggg); 6.1A; 6.2B(c)(i)(C) and Interpretation and Policy .04; 6.8(f); 6.13(a) and (b); 6.13A(c) and (d) and Interpretation and Policy .04(ii); 6.14(c)(2); 6.20, Interpretation and Policy .05; 6.42(4)(b); 6.49A, Interpretation and Policy .02; 6.53B(c); 6.53C(c)(ii) and (d)(v), and Interpretations and Policies .06(c) and .11; 6.74A(b)(2)(E) and

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6). See also Item 7(b) of the Exchange’s Form 19b-4 filing, in which the Exchange provides additional support for the basis for summary effectiveness of its proposal under Rule 19b-4(f)(6). Specifically, the Exchange states: “The proposed rule change is amending its allocation and priority rules to: (1) Combine rule provisions in Rules 6.45, 6.45A and 6.45B regarding allocation and priority into a single rule; (2) more accurately reflect and add detail regarding current System functionality; (3) eliminate duplicative rule provisions; (4) delete obsolete rules the Exchange no longer uses; and (5) make other nonsubstantive and technical changes, including to make the language describing the allocation principles consistent throughout, to make the rule text plain English, to use defined terms, to clarify rules that apply to orders and quotes (when in the context, it is apparent the rule should not apply to just orders), and to use consistent lettering and numbering for subparagraphs within the rules. The Exchange notes current Rules 6.45A and 6.45B are nearly identical, and the proposed rule change merely moves current Rule 6.45 into the proposed combined Rule 6.45, where it is already incorporated by reference in current rules. As discussed below, the substantive changes, including proposed provisions regarding (1) pro-rata and rounding, (2) the participation entitlements being based on quotes and broker-dealer orders and being the greater of the percentage or one contract, (3) decrementation, (4) contingency order priority, and (5) the impact of order and quote modification on priority, are substantially similar to the rules of another exchange and consistent with System functionality. The System will continue to allocate and prioritize orders and quotes under the proposed rule change as it does today. The Exchange believes the proposed rule change simplifies the allocation and priority rule provisions and provides additional transparency to investors regarding the allocation of orders and quotes. With respect to the proposed rule change regarding the distribution of contracts when they

cannot be allocated proportionally in whole numbers pursuant to pro-rata algorithm, the Exchange notes the additional detail included in the proposed rule change is consistent with current rule text (which provides they are distributed in time priority). The proposed rule change regarding the distribution of contracts when they cannot be allocated proportionally in whole numbers pursuant to UMA (proposed to be renamed the aggregated pro-rata algorithm) is fair, reasonable and nondiscriminatory. The proposed rule change regarding the quote lock timer counting period is consistent with previous rule filings regarding that functionality, and the proposed rule change regarding capping orders and auction responses that trade with an auctioned order following a COA is consistent with other auction functionality on the Exchange. Additionally, as discussed above, certain provisions of the proposed rule change, including those regarding the decrementation of an order or quote after partial execution, the priority of modified orders and quotes, and the priority of contingency orders, are substantially similar to those of another options exchange.”

this simplifies the priority and allocation rules applicable to trading on the Exchange and will reduce any

confusion regarding which priority and allocation rules apply.  
The following table identifies the location of the priority and allocation

rule provisions in current Rules 6.45, 6.45A and 6.45B and the location in the proposed combined Rule 6.45:

General Rule provision	Current Rule(s)	Proposed Rule
Highest bids and lowest offers have priority in open outcry .....	Rules 6.45(a)(i) and (b), 6.45A(b)(i) and 6.45B(b)(i).	Rule 6.45(b)(i).
Public <sup>7</sup> customer orders in the book have first priority in open outcry trading, and if two or more public customer orders are at the same price, priority is afforded according to time.	Rules 6.45(a)(i) and (b), 6.45A(b)(i)(A) and 6.45B(b)(i)(A).	Rule 6.45(b)(i)(A).
Open outcry priority of bids and offers applies to orders being represented by a Floor Broker or PAR Official or to bids made in response to a specific request from a Market-Maker <sup>8</sup> .	Rules 6.45(a)(ii) and (b), 6.45A(b) and 6.45B(b).	Rule 6.45(b).
Bids and offers of in-crowd market participants made at the time the market is established have second priority in open outcry trading, and if two or more bids and offers are at the same price at the time the market was established, priority is afforded in the sequence in which they were made (or equally if sequence cannot be determined), which sequence is determined by the floor broker or PAR official representing the order, the Designated Primary Market-Maker ("DPM") or Lead Market-Maker ("LMM"), <sup>9</sup> or the Market-Maker requesting the bid (offer); if the sequence cannot be determined beyond a certain number of market participants, any remaining contracts will be apportioned equally among those market participants who bid at the best price at the time the market was established; if a market participant declines to accept any portion of the available contracts, any remaining contracts will be apportioned equally among the other market participants who bid at the best price at the time the market was established until all contracts have been apportioned; if any contracts remain in an order and the remainder is not cancelled, and in-crowd market participants subsequently make bids (offers) in a reasonably prompt manner, the remainder is apportioned equally between the in-crowd market participants who bid (offered) the best price.	Rules 6.45(a)(ii) and (b), 6.45A(b)(i)(B) and 6.45B(b)(i)(B).	Rule 6.45(b)(i)(B).
Broker-dealer orders and Market-Maker quotes in the book have third priority in open outcry trading, and if two or more orders or quotes are at the same price, priority is afforded in accordance with the applicable electronic algorithm.	Rules 6.45A(b)(i)(C) and 6.45B(b)(i)(C).	Rule 6.45(b)(i)(C).
"G-exemption" rule with respect to open outcry trading .....	Rules 6.45A(b)(i)(D) and 6.45B(b)(i)(D).	Rule 6.45(b)(i)(D).
Complex order priority exception .....	Rules 6.45(e), 6.45A(b)(ii) and 6.45B(b)(ii).	Rule 6.45(ii).
Open outcry priority and allocation provisions are subject to Rule 8.7, Interpretation and Policy .02 and Rule 8.51.	Rule 6.45, Interpretation and Policy .02.	Rule 6.45(b)(iii).
Definition of "in-crowd market participant" or "ICMP" as an in-crowd Market-Maker, DPM or LMM with an allocation or appointment, respectively, in the class, and a Floor Broker or PAR Official representing orders in the trading crowd..	Rules 6.13B(b), 6.45A (introductory paragraph), 6.45B (introductory paragraph) and 6.74 (introductory paragraph).	Rule 1.1(uuu).
Price-time priority .....	Rules 6.45A(a)(ii) and 6.45B(a)(i)	Rule 6.45(a)(i)(A).
Pro-rata priority .....	Rules 6.45A(a)(ii) and 6.45B(a)(i)	Rule 6.45(a)(i)(B).
Ultimate matching algorithm ("UMA") <sup>10</sup> .....	Rules 6.45A(a)(i) and 6.45B(a)(ii)	Rule 6.45(a)(i)(C).
Public customer priority overlay <sup>11</sup> .....	Rules 6.45A(a)(i)(A)(1) and (a)(ii)(1), and 6.45B(a)(i)(1) and (a)(ii)(A)(1).	Rule 6.45(a)(ii)(A).
Participation entitlement priority overlay .....	Rules 6.45A(a)(i)(C) and (a)(ii)(2), and 6.45B(a)(i)(2) and (a)(ii)(C).	Rule 6.45(a)(ii)(B).
Small order preference priority overlay .....	Rules 6.45A(a)(iii)(1) and 6.45B(a)(iii)(1).	Rule 6.45(a)(ii)(C).
Market turner priority overlay .....	Rules 6.45A(a)(iii)(2) and 6.45B(a)(iii)(2).	Rule 6.45(a)(ii)(D).
Handling of locked and inverted electronic quotes .....	Rules 6.45A(d) and 6.45B(d) .....	Rule 6.45(c).
Restriction on execution by order entry firms as principal against orders they represent, including requirement to expose the orders for a specified period of time.	Rules 6.45A, Interpretation and Policy .01 and 6.45B, Interpretation and Policy .01.	Rule 6.45, Interpretation and Policy .01.
Requirement of order entry firms to expose orders they represent as agent for a specified period of time prior to executing the orders against solicited orders.	Rules 6.45A, Interpretation and Policy .02 and 6.45B, Interpretation and Policy .02.	Rule 6.45, Interpretation and Policy .02.

Interpretation and Policy .08; 6.74B, Interpretation and Policy .03; 6.82(b)(4); 7.4(f) and Interpretation and Policy .06; 22.13(b) and (d); 24.19(c)(iv); and 29.14 to reflect proposed Rule 6.45. The proposed rule change also deletes the introductory language in each of current Rules 6.45A and 6.45B that

indicate that the rule applies to equity options and index and ETF options, respectively. Additionally, the proposed rule change deletes the names of cross-referenced rules and instead includes numbers only in Rules 6.8(f); 6.9, Interpretation and Policy .05; 6.13(a); 6.20, Interpretation and Policy

.05; and 6.49A, Interpretation and Policy .02. Names of rules are not consistently included in cross-references throughout the rules, and CBOE believes cross-referencing the appropriate rule number is sufficient.

General Rule provision	Current Rule(s)	Proposed Rule
Exposure counting period for executions of principal transactions and solicited orders in Hybrid 3.0 classes. Applicability of allocation and priority rules to the displayed and non-displayed portions of reserve orders.	Rule 6.45B, Interpretation and Policy .03. Rules 6.45A, Interpretation and Policy .03 and 6.45B, Interpretation and Policy .04.	Rule 6.45, Interpretations and Policies .01 and .02. Rule 6.45(a)(v)(B) and Interpretation and Policy .03.
Order or quote may not be allocated a total quantity greater than the order or quote at the execution price.	Rules 6.45A(a)(i), (a)(ii)(2) and (a)(iii); 6.45B(a)(i)(2), (a)(ii) and (a)(iii); 8.13(c)(i); 8.15(d)(i); and 8.87(b)(1)(ii).	Rule 6.45(a)(i), 8.13(c)(i), 8.15(d)(i), and 8.87(b)(1)(ii).
The Exchange will announce any determinations made by Regulatory Circular.	Rules 6.45 (introductory paragraph), 6.45A(a)(i)(C), (a)(ii), (a)(iii), and (c), 6.45B(a)(i), (a)(ii)(C), (a)(iii), and (c).	Rule 6.45, Interpretation and Policy .04.
To be eligible for a participation entitlement, a Market-Maker must be quoting at the BBO.	Rules 6.45A(a)(ii)(2)(A), 6.45B(a)(i)(2)(A), 8.13(b)(ii), 8.15(d)(i), and 8.87(b)(1)(i).	Rules 8.13(b)(ii), 8.15(d)(i), and 8.87(b)(1)(i).
The Exchange may apply a participation entitlement only if it has applied the public customer priority overlay, and the participation entitlement is based on the number of contracts remaining after all public customer orders at the same price have been filled.	Rules 6.45A(a)(i)(C) and (ii)(2)(2)(D), 6.45B(a)(i)(2)(D) and (a)(ii)(C).	Rules 6.45(a)(ii)(B)(2), 8.13(c)(ii), 8.15(d)(i), and 8.87(b)(1)(iii).
The Exchange may apply more than one participation entitlement for a class (in different sequences), but no more than one participation entitlement may apply on the same trade.	Rules 6.45A(a)(ii)(2) and 6.45B(a)(i)(2).	Rule 6.45A(a)(ii)(B)(3).

As the table demonstrates, numerous allocation and priority rule provisions are included in multiple places within the rules. The proposed rule change eliminates this duplication within the proposed Rule 6.45.<sup>12</sup>

The proposed Rule 6.45 simplifies the electronic allocation and priority rules by reorganizing them to first describe the three base electronic allocation algorithms and then describe the four priority overlays that may apply to the base electronic allocation algorithms. Currently, and as proposed, there are three base electronic allocation

algorithms: Price-time,<sup>13</sup> pro-rata,<sup>14</sup> and UMA (proposed to be renamed aggregated pro-rata).<sup>15</sup> With respect to price-time and pro-rata, currently and as proposed, the Exchange may apply public customer (proposed to be renamed priority customer)<sup>16</sup> and participation entitlement<sup>17</sup> overlays on a class-by-class basis; with respect to UMA, public customer and participation entitlement overlays currently automatically apply.<sup>18</sup> The Exchange believes it is simpler to have a structure of three base algorithms and optional overlays (currently four) that may be applied in the same manner to the base algorithms. The proposed aggregated pro-rata allocation will be subject to the restriction described in the table above that provides if the Exchange applies a participation entitlement to a class, it must also apply the public customer priority in the priority sequence ahead of the participation entitlement, which is consistent with how UMA functions

today. While the proposed rule change makes nonsubstantive changes to the description of the price-time and pro-rata base electronic allocation algorithms (for example, to make the language describing the allocation principles consistent throughout the Rules and plain English), the proposed rule change does not amend how these algorithms apply to trading on the Exchange.

The proposed rule change adds detail to how the System distributes contracts pursuant to the pro-rata algorithm and rounds fractions of contracts. Current Rules 6.45A(a)(ii) and 6.45B(a)(i) state executable quantity is allocated to the nearest whole number, with fractions  $\frac{1}{2}$  or greater rounded up and fractions less than  $\frac{1}{2}$  rounded down. Those rules also state if there are two market participants both are entitled to an additional  $\frac{1}{2}$  contract and there is only one contract remaining to be distributed, the additional contract will be distributed to the market participant(s) whose quote or order has time priority. This is consistent with System functionality; however, it represents only one example (a situation in which there are two market participants and only one remaining contract) rather than a general rule regarding allocations of contracts that cannot be allocated proportionally in whole numbers. For example, three market participants may be entitled to an additional fraction of a contract.

The proposed rule change amends this provision to state if there are two or more resting orders or quotes at the best price, then the System allocates contracts from an incoming order or

<sup>7</sup> As discussed below, the proposed rule change uses the term "priority customer" rather than "public customer."

<sup>8</sup> The current rule text includes references to Order Book Officials having the same obligation. The Exchange no longer uses Order Book Officials, so the proposed rule change omits the Order Book Official references from this provision.

<sup>9</sup> The Exchange notes current Rule 6.45(a)(ii) does not include a reference to LMM. Some classes have DPMs, while others have LMMs. This is consistent with the definition of in-crowd market participant in current Rule 6.45B, which includes the LMM in the class. Proposed Rule 6.45(b)(i)(B) thus includes a reference to LMM in addition to DPM to allow for an LMM to determine sequence in classes with an LMM rather than a DPM.

<sup>10</sup> The proposed rule change renames UMA as the "aggregated pro-rata" allocation algorithm.

<sup>11</sup> The proposed rule change renames the public customer priority as the priority customer priority.

<sup>12</sup> The proposed rule change makes certain, nonsubstantive changes to some of these provisions, such as making the language consistent with other provisions, making the language plain English, and conforming lettering and numbering. Except as otherwise described in this rule filing, the proposed provisions apply in the same manner as the current provisions.

<sup>13</sup> See current Rules 6.45A(a)(ii) and 6.45B(a)(i) and proposed Rule 6.45(a)(i)(A).

<sup>14</sup> See current Rules 6.45A(a)(iii) and 6.45B(a)(i) and proposed Rule 6.45(a)(i)(B).

<sup>15</sup> See current Rules 6.45A(a)(i) and 6.45B(a)(ii) and proposed Rule 6.45(a)(i)(C). Because the Exchange applies UMA (proposed to be renamed aggregated pro-rata) to most classes, the proposed rule change states proposed Rule 6.45(a)(i)(C) will apply to all classes, except to classes to which the Exchange determines to apply the base electronic allocation algorithm in proposed subparagraph (A) or (B).

<sup>16</sup> See current Rules 6.45A(a)(ii)(1) and 6.45B(a)(i)(1) and proposed Rule 6.45(a)(ii)(A).

<sup>17</sup> See current Rules 6.45A(a)(ii)(2) and 6.45B(a)(i)(2) and proposed Rule 6.45(a)(ii)(B).

<sup>18</sup> See current Rules 6.45A(a)(i)(A)(1) and (a)(i)(C) and 6.45B(a)(ii)(A)(1) and (a)(ii)(C) and proposed Rule 6.45(a)(ii)(A) and (B).

quote to resting orders and quotes sequentially in the order in which the System received them (*i.e.*, according to time) proportionally according to size (*i.e.*, on a pro rata basis). The System allocates contracts to the first resting order or quote proportionally according to size (based on the number of contracts to be allocated and the size of the resting orders and quotes). Then, the System recalculates the number of contracts to which each remaining resting order and quote is afforded proportionally according to size (based on the number of remaining contracts to be allocated and the size of the remaining resting quotes and orders) and allocates contracts to the next resting order or quote. The System repeats this process until it allocates all contracts from the incoming order or quote. The System rounds fractions  $\frac{1}{2}$  or greater up and fractions less than  $\frac{1}{2}$  down prior to each allocation. This proposed provision is consistent with the current rule that states contracts are distributed to quotes and orders in time priority. It adds detail regarding the sequential nature of the allocation process and applies the provision to situations in which any number of orders or quotes may be entitled to non-whole numbers of contracts. The Exchange believes this is a fair, objective process and simple systematic process to allocate “extra” contracts when more than one market participant may be entitled to those extra contracts after rounding.

The following examples demonstrate this process:

- *Example 1:* Suppose there are three resting orders at the same price with sizes of 30 (Order A), 20 (Order B) and 10 (Order C) (received by the System in that order), and an incoming order with size of 15 is marketable against those three orders. The System first allocates 8 contracts to Order A ( $\frac{1}{2}$  of 15 is 7.5, which rounds to 8). After this allocation, the System allocates 5 of the 7 remaining contracts to Order B ( $\frac{2}{3}$  of 7 is 4.7, which rounds to 5), and then allocates the remaining 2 contracts to Order C.

- *Example 2:* Suppose there are three resting orders at the same price with sizes of 10 (Order A), 20 (Order B) and 30 (Order C) (received by the System in that order), and an incoming order with size of 15 is marketable against those three orders. The System first allocates 3 contracts to Order A ( $\frac{1}{3}$  of 15 is 2.5, which rounds to 3). After this allocation, the System allocates 5 of the 12 remaining contracts to Order B ( $\frac{2}{5}$  of 12 is 4.8, which rounds to 5), and then allocates the remaining 7 contracts to Order C.

- *Example 3:* Suppose there are three resting orders A, B and C (received by the System in that order) at the same price, each with a size of 50, and an incoming order with size of 100 is marketable against those three orders. The System first allocates 33 contracts to Order A ( $\frac{1}{3}$  of 100 is 33.3, which rounds to 33). After this allocation, the System allocates 34 of the 67 remaining contracts to Order B ( $\frac{1}{2}$  of 67 is 33.5, which rounds to 34), and then allocates the remaining 33 contracts to Order C.

The proposed rule change amends and redefines UMA as aggregated pro-rata. Current Rules 6.45A(a)(i) and 6.45B(a)(ii) provide, when there is more than one order or quote at the same price, the allocation will be based on two components (which will be a weighted average of the percentages established by the Exchange for each component): Component A is based on the number of market participants quoting at the Exchange’s best bid or offer (“BBO”) and Component B (also known as the size pro-rata allocation) is based on the size of each market participant’s quote or order at the BBO relative to the total size at the BBO. Currently, in any class in which UMA applies, the Exchange has established a 0% weight to Component A and 100% weight to Component B. Thus, orders and quotes are allocated pursuant to the size pro-rata allocation of Component B (Component B includes the process of aggregating broker-dealer interest, as further described below). The Exchange does not intend to factor in Component A to UMA. Therefore, the proposed rule change deletes Component A and redefines UMA as aggregated pro-rata allocation (which is current Component B). Proposed Rule 6.45(a)(i)(C) states resting quotes and orders in the book are prioritized according to price. If there are two or more quotes or orders at the same price, then priority is afforded among these quotes and orders based on the percentage that the size of each quote and order at that price represents relative to the total number of contracts at that price. For purposes of this provision, all broker-dealer orders at the same price will be treated as one broker-dealer order, with size consisting of the cumulative number of contracts in those broker-dealer orders at that price. After the “one” broker-dealer order is allocated a certain number of contracts pursuant to this subparagraph, those contracts are allocated proportionally according to size to each broker-dealer order comprising the “one” broker-dealer order. The proposed rule change is merely deleting the part of UMA that is no longer used and any related rule

text, such as the provisions related to weighting of two components and the equations demonstrating how UMA applies when both components are in effect.<sup>19</sup> Proposed Rule 6.45(a)(i)(C) incorporates the provisions in current Rules 6.45A(i) and (i)(A)(2) and 6.45B(ii) and (ii)(A)(2) that describe the operation of this algorithm, which will continue to remain in place. Allocation pursuant to aggregated pro-rata will be the same as it is today, although the proposed rule change simplifies the description (for example, the proposed rule change revises the first part of this provision to use language consistent with that used in the pro-rata description; unlike in the standard pro-rata allocation, broker-dealer orders are aggregated prior to the pro-rata distribution).

The proposed rule change adds detail to how the System distributes contracts pursuant to the proposed aggregated pro-rata algorithm and rounds fractions of contracts. If the number of contracts cannot be allocated proportionally in whole numbers, the System randomly allocates extra contracts to resting orders and quotes. The Exchange believes this is a fair, objective process and simple systematic process to allocate “extra” contracts when more than one market participant may be entitled to those extra contracts after rounding.

The four electronic priority overlays are public customer, participation entitlement, small order and market turner.<sup>20</sup> Current Rules 6.45A(a)(ii)(1) and 6.45B(a)(i)(1) provide when the public customer priority overlay is in effect, public customer orders have priority over non-public customer orders at the same price and that priority is afforded among public customer orders at the same price according to time. The proposed rule change includes this provision in proposed Rule 6.45(a)(ii)(A) and makes nonsubstantive changes to the public

<sup>19</sup> The proposed rule change amends Rule 6.53C(d) to change the term UMA to aggregated pro-rata with customer priority (which applies to the allocation of complex orders following a complex order auction in certain circumstances in that provision) to conform to the new terms (as well as to make other nonsubstantive changes, including making the language plain English). Similarly, the proposed rule change deletes part of Rules 6.45A(a)(i)(C)(1) and 6.45B(a)(ii)(C)(1) and Rule 6.45B(a)(ii)(C)(3), which provide for an On-Floor DPM or LMM to be entitled to receive a different amount under the participation entitlement overlay for purposes of Component A of UMA than it would otherwise receive pursuant to UMA, and 8.3(c)(vi), which relates to a restriction imposed when UMA with a Component A percentage applies to a class.

<sup>20</sup> As described in current Rules 6.45, 6.45A(b) and 6.45B(b) and proposed Rule 6.45(b), customer orders in the electronic book receive priority in open outcry trading.

customer priority, including to make the language consistent with other allocation and priority provisions. Additionally, proposed Rule 6.45(a)(ii)(A) clarifies that public customer orders in the book have priority over non-public customer orders and quotes, which is the intent of the provision and consistent with the other priority provisions that reference orders and quotes.

The proposed rule change amends the rules related to PMM, LMM and DPM participation entitlements (in addition to the elimination of duplicative language as described in the table above and other nonsubstantive changes to, for example, make the language consistent with other rule provisions regarding priority, add defined terms and make the language more plain English). Current Rule 8.13 provides a Preferred Market-Maker ("PMM") participation entitlement is 50% if there is one other Market-Maker also quoting at the Exchange's best bid or offer ("BBO") and 40% if there are two or more Market-Makers also quoting at the BBO, and Rules 8.15 and 8.87 provide that a LMM or DPM participation entitlement, respectively, is 50% if there is one Market-Maker also quoting at the BBO, 40% if there are two Market-Makers also quoting at the BBO and 30% if there are three or more Market-Makers quoting at the BBO. The proposed rule change provides each of the PMM, LMM and DPM participation entitlement is based on both the number of other Market-Maker quotes and broker-dealer orders at the BBO.<sup>21</sup> This is consistent with current System functionality. Additionally, the current rules consider whether other Market-Makers are quoting at the best price, because Market-Makers provide liquidity to CBOE's market and are encouraged to do so if they have the opportunity to participate in a larger portion of a trade in which a PMM, LMM or DPM has a participation right. Other Trading Permit Holders besides Market-Makers provide liquidity to CBOE's market through orders, and the Exchange believes those Trading Permit Holders, like Market-Makers, should have the same opportunity with respect to broker-dealer orders.

The proposed rule change also provides the participation entitlement will be the greater of the above percentages or one contract. This change is consistent with current System functionality as well as the intent of the

participation entitlement, which is to provide PMMs, LMMs and DPMs with a benefit for their heightened quoting obligations.<sup>22</sup> Because fractions of contracts of less than  $\frac{1}{2}$  are rounded down, as discussed above, a transaction involving a small number of contracts may result in zero contracts being allocated to a PMM, LMM or DPM who should otherwise have priority. For example, if there is one contract left after an order trades with a public customer order, and there is a DPM and two other Market-Makers quoting at the BBO, 40% of one would give the DPM zero contracts, as .4 would round down to zero.<sup>23</sup> Thus, this proposed rule change is intended to ensure that a PMM, LMM or DPM would receive a contract in this situation to continue to encourage PMMs, LMMs or DPMs to provide liquidity on the Exchange.

The proposed rule change also provides, for purposes of determining the applicable PMM, LMM or DPM participation entitlement percentage (with respect to an electronic execution), broker-dealer orders at the same price will be treated as one broker-dealer order with size consisting of the cumulative number of contracts in those broker-dealer orders. This is also consistent with current System functionality and UMA (proposed to be renamed aggregated pro-rata allocation algorithm), to which these participation entitlements generally apply. For example, if the market is \$1.00–\$1.20, with the DPM's quote bid at \$1.00 and three broker-dealer orders to buy at \$1.00, a trade at \$1.00 will allocate 50% to the DPM and 50% among the three broker-dealer orders.<sup>24</sup> The System considers those three orders as one "order," and thus there was one other "broker-dealer order" at the BBO with the DPM, which results in a 50% participation entitlement for the DPM for trades at that price.

The second change to the participation entitlement overlay is to delete the provisions that allow the Exchange to determine which entitlement formula will apply to the overlay. Currently, the rules provide, with respect to UMA, the Exchange determines on a class-by-class basis whether a participation entitlement will equal either (1) the greater of the amount the Market-Maker would be entitled to pursuant to the participation entitlement or the amount it would

otherwise receive pursuant to UMA or (2) the amount the Market-Maker would be entitled to pursuant to the participation entitlement.<sup>25</sup> With respect to price-time and pro-rata, the rules currently provide the Exchange with the ability to apply a modified participation entitlement, pursuant to which a Market-Maker will only receive a participation entitlement if the entitlement amount is greater than the amount the Market-Maker would otherwise receive pursuant to the allocation algorithm (if it was not, there would be no participation entitlement).<sup>26</sup> When the Exchange applies the participation entitlement to a class (with any base allocation algorithm), a Market-Maker receives the greater of the participation entitlement amount or the amount it would otherwise receive pursuant to the applicable allocation algorithm. Therefore, the proposed rule change deletes the other participation entitlement options. The participation entitlement in proposed Rule 6.45(a)(ii)(B) includes the following provisions included in the current rules: (1) The Exchange may apply more than one participation entitlement for a class (including at different priority sequences); (2) only one participation entitlement may apply to the same trade; (3) the Exchange may apply a participation entitlement only if it has applied the priority customer overlay in a priority sequence ahead of the participation entitlement; (4) the PMM, LMM or DPM must satisfy the conditions in Rule 8.13, 8.15 or 8.87, respectively; and (5) the participation entitlement is based on the number of contracts remaining after all priority customer orders in the book at the same price have been filled.<sup>27</sup> Ultimately, the participation entitlement priority overlay will continue to be applied in the same manner as it is today.

The Exchange makes nonsubstantive and technical changes to the small preference and market turner priority overlays (in addition to the deletion of duplicative language as described in the table above), such as to make the language consistent with other allocation and priority rule provisions (including changing NBBO to BBO, which is consistent with the participation entitlement language in

<sup>25</sup> See current Rules 6.45A(a)(i)(C)(1) and (2) and 6.45B(a)(ii)(C)(1) and (2).

<sup>26</sup> See current Rules 6.45A(a)(ii)(3) and 6.45B(a)(i)(3). As discussed above, there is a third alternative in Rule 6.45B(a)(ii)(C)(3) related to Component A of UMA, which the proposed rule change deletes. See *supra* note 15.

<sup>27</sup> See current Rules 6.45A(a)(ii)(2), 6.45B(a)(i)(2), 8.13(c), 8.15(d), and 8.87(b).

<sup>21</sup> The proposed rule change makes a corresponding change to Rule 8.13, Interpretation and Policy .01(b) related to the PMM participation entitlement with respect to complex orders.

<sup>22</sup> See proposed Rules 8.13, 8.15 and 8.87.

<sup>23</sup> The contract would ultimately go to the Market-Maker who entered its quote first, as discussed above.

<sup>24</sup> The 50% is allocated among the three broker-dealer orders in accordance with the applicable allocation algorithm to that class.

Rules 8.13(c), 8.15(d), and 8.87(b) and the fact that allocation and priority principles are applied to orders and quotes at CBOE's bid or offer),<sup>28</sup> make the language more plain English and use consistent lettering and numbering. However, the manner in which the System applies to these priority overlays remains unchanged.

The proposed rule change adds the following definitions related to the allocation of orders:<sup>29</sup>

- A “broker-dealer order” is an order for an account in which a Trading Permit Holder, a non-Trading Permit Holder broker or dealer in securities (including a foreign broker-dealer), a joint venture with Trading Permit Holder and non-Trading Permit Holder participants, or, in Hybrid classes for purposes of the Rules listed in paragraphs (fff) and (ggg) of this Rule 1.1, a Voluntary Professional or Professional has an interest;<sup>30</sup>

- a “public customer” means a person or entity that is not a broker or dealer in securities;<sup>31</sup>

- a “public customer order” means an order for the account of a public customer;<sup>32</sup>

- a “priority customer” means, in Hybrid classes, a person or entity that is a public customer and is not a Professional or Voluntary Professional, and, in Hybrid 3.0 classes, a person or entity that is a public customer;<sup>33</sup> and

<sup>28</sup> The Exchange notes, pursuant to Rule 6.81, trades may not constitute trade-throughs.

<sup>29</sup> As noted above, the proposed rule change also moves the definition of an in-crowd market participant from Rules 6.13B(b), 6.45A (introductory paragraph), 6.45B (introductory paragraph) and 6.74 (introductory paragraph) to proposed Rule 1.1(uuu). An “in-crowd market participant” or “ICMP” is an in-crowd Market-Maker, an on-floor DPM or LMM with an allocation or appointment, respectively, in the class, or a floor broker or PAR Official representing orders in the trading crowd.

<sup>30</sup> See proposed Rule 1.1(ttt). This definition is consistent with those of a Trading Permit Holder (which must be a registered U.S. broker-dealer under the Rules) (see Rules 3.2 and 3.3), a Foreign Broker-Dealer (see Rule 1.1(xx)), a Voluntary Professional (see Rule 1.1(fff)), and a Professional (see Rule 1.1(ggg)), as well as the current description of who does not qualify as a public customer (see Rules 6.45A(a)(ii)(1) and 6.45B(a)(i)(1)).

<sup>31</sup> See proposed Rule 1.1(xxx). This definition is consistent with the definition in Rule 6.74, Interpretation and Policy .01 and merely extends the definition to apply to all rules.

<sup>32</sup> See proposed Rule 1.1(yyy).

<sup>33</sup> See proposed Rule 1.1(vvv). As set forth in Rule 1.1(fff) and (ggg), the Voluntary Professional and Professional designations are not available in Hybrid 3.0 classes. Thus, defining a “priority customer” as a “public customer” with respect to Hybrid 3.0 classes is consistent with the current definitions of Voluntary Professional and Professional.

- a “priority customer order” is an order for the account of a priority customer.<sup>34</sup>

For purposes of allocation and priority, public customers that are Professionals or Voluntary Professionals (in Hybrid classes) are treated as broker-dealers.<sup>35</sup> The proposed rule change adds the concept of a priority customer, which is a public customer that receives priority when the public customer overlay is in effect. The priority customer definition is consistent with how priority rules currently apply, and the same customers that currently receive priority pursuant to that overlay will continue to receive the same priority under the proposed rule change. The Exchange believes adding the concept of a priority customer provides more clarity in the allocation and priority rules regarding which customers receive priority. Similarly, the definition of a broker-dealer order clarifies that the term includes orders of Professionals and Voluntary Professionals for purposes of the Rules set forth in the definitions of those terms. The proposed rule change amends Rules 6.2A(a)(i) and (ii); 6.8C(a); 6.9 (introductory paragraph) and Interpretation and Policy .01; 6.13A(d)(v); 6.45, 6.45A and 6.45B (current) and Rule 6.45 (proposed); 6.53C(d)(v) and Interpretation and Policy .06(b); 6.74; 6.74A(b)(3) and Interpretations and Policies .07 an .08; 6.74B(b)(2)(A)(II) and Interpretation and Policy .01; 7.4(a)(1); 8.13(c) and Interpretation and Policy .01(b); 8.15(d); 8.87(b); and 17.50(g)(5) to incorporate this concept of priority customer, as well as the related concept of broker-dealer orders, by updating references to customer or public customer and adding references to broker-dealer orders, when necessary, throughout the rules in which Voluntary Professionals and Professionals are treated as broker-dealers rather than public customers pursuant to Rule 1.1(fff) and (ggg).<sup>36</sup>

Currently, Rules 6.45A and 6.45B define market participants as Market-Makers, DPMs (or LMMs in Rule 6.45B) with an appointment in the subject

<sup>34</sup> See proposed Rule 1.1(uuu).

<sup>35</sup> See Rule 1.1(fff) and (ggg) (definitions of Voluntary Professional and Professional, respectively). Pursuant to the CBOE Fees Schedule, the classification of an order as that of a Professional or Voluntary Professional impacts fees due with respect to that order. As noted in the definitions of Voluntary Professional and Professional, these designations are not available in Hybrid 3.0 classes.

<sup>36</sup> The proposed rule change also amends Rule 6.13(b)(i)(C) to eliminate the phrase “non-broker-dealer” before public customer, as the fact that a public customer is not a broker-dealer is included in the proposed definition of public customer in proposed Rule 1.1(xxx).

class, and floor brokers and PAR officials representing orders in the trading crowd. The allocation and priority rules generally indicate they apply to orders and quotes of market participants. However, the current definition of market participants does not include broker-dealers that are not Market-Makers or floor brokers (and thus does not include all Trading Permit Holders). While allocation and priority rules may depend on the order origin types (*i.e.*, priority customers, Professionals and Voluntary Professionals, Market-Makers, broker-dealers), the allocation and priority rules apply to all orders and quotes submitted by all Trading Permit Holders,<sup>37</sup> as well as orders represented by PAR Officials, which proposed Rule 6.45, Interpretation and Policy .05 explicitly states. The proposed rule change eliminates the term market participants from current Rules 6.45A and 6.45B (and proposed Rule 6.45) and updates these allocation and priority rules to indicate that the rules apply to all orders and quotes on the Exchange.<sup>38</sup>

The Exchange adds three new provisions to add detail regarding current System functionality. Proposed Rule 6.45(a)(iii) states, upon execution of an order or quote, the System decrements the order or quote by an amount equal to the size of that execution. The remaining size of the order or quote retains its position with respect to priority for subsequent executions. Partial executions may occur under the current rules, and if an order or quote may not be completely filled by one execution, the Exchange believes it is appropriate for the remaining size to retain priority.<sup>39</sup>

Proposed Rule 6.45(a)(iv) adds how modifications to an order or quote's price or size impacts priority. If a Trading Permit Holder modifies the price of an order or quote or increases

<sup>37</sup> The Exchange notes only Market-Makers may submit quotes. See Rule 8.7.

<sup>38</sup> The proposed rule change makes corresponding changes to eliminate the definition of market participants in Rules 6.13(b), 6.43(b)(i), 7.4(a)(1) and (b)(iv), and Rule 8.51, Interpretation and Policy .02, generally replacing the term with Trading Permit Holders or Trading Permit Holders and PAR Officials, as applicable. The proposed rule change also amends the name of Rule 8.3A to change the term market participants to Trading Permit Holders, which is consistent with the term used in the rule text of Rule 8.3A. Similarly, the proposed rule change amends Rule 6.13B to replace the terms “users” in the introductory paragraph and “public customers and all other users” in paragraph (a)(2) with Trading Permit Holders, as Trading Permit Holders are the market participants that may submit orders subject to the penny price improvement program under that rule.

<sup>39</sup> Proposed Rule 6.45(a)(iii) is substantially similar to C2 Options Exchange, Incorporated (“C2”) Rule 6.12(d).

the size of an order or quote, those orders and quotes lose priority and are treated as new orders or quotes. The Exchange believes these changes are equivalent to entering new orders or quotes, as they could impact the priority of an order or quote or potentially be allocated larger portions of a trade. The Exchange believes decreasing the size of an order or quote (similar to decrementation of an order or quote after partial execution), should not impact priority, as such a modification would potentially decrease the allocation to that order or quote.<sup>40</sup> These proposed provisions are consistent with current System functionality, as well as industry practices, and are merely adding detail to the rules.

Proposed Rule 6.45(a)(v) adds detail regarding the prioritization of contingency orders.<sup>41</sup> The proposed rule change states once a certain event or trading condition satisfies an order's contingency, an order is no longer a contingency order and is treated as a market or limit order (as applicable), prioritized in the same manner as any other market or limit order based on the time it enters the book following satisfaction of the contingency (*i.e.*, last in time priority with respect to other orders and quotes resting in the book at that time).<sup>42</sup> If contingencies of multiple orders are satisfied at the same time, the System sends them to the book in the order in which the System initially received them.

Notwithstanding the foregoing, under any algorithm in Rule 6.45(a):<sup>43</sup>

(1) All displayed orders and quotes at a given price have priority over all-or-none order.

(2) Upon receipt of a reserve order, the System displays in the book any initially display-eligible portion of the reserve order, which is prioritized in the same manner as any other order (*i.e.*,

based on the time the System receives it). Once any non-displayed portion of a reserve order becomes eligible for display, the System displays in the book that portion of the order and prioritizes it based on the time it becomes displayed in the book (*i.e.*, last in time priority with respect to other orders and quotes resting in the book at that time).

(3) Immediate-or-cancel and fill-or-kill orders are not placed in the book and thus are not prioritized with respect to other resting orders and quotes in the book (by definition, those types of orders are cancelled if they do not execute as soon as they are represented on the Exchange so have no opportunity to rest in the book). These orders execute against resting orders and quotes in the book based on the time the System receives them (*i.e.*, the System processes these orders in the time sequence in which it receives them).

(4) All-or-none orders are always last in priority (including after the undisplayed portions of reserve orders). If the Exchange applies priority customer overlay to a class, orders trade in the following order: (A) Priority customer orders other than all-or-none, (B) non-priority customer orders other than all-or-none and quotes, (C) priority customer all-or-none orders (in time sequence), and (D) non-priority customer all-or-none orders (in time sequence). If the Exchange applies pro-rata with no priority customer overlay or price-time to a class, orders trade in the following order: (A) Orders other than all-or-none and quotes, and (B) all-or-none orders (in time sequence).<sup>44</sup>

The Exchange believes this provision is consistent with the definitions of these order types, pursuant to which most contingency orders become market or limit orders once the contingency is satisfied. All-or-none orders must always be last in priority to ensure that there is sufficient size to satisfy the condition of such an order to trade in its entirety after all other orders at the same price have executed. Additionally, the Exchange believes it is reasonable for orders not displayed in the book to not receive priority over orders that are displayed, as they are not yet eligible for execution until they become displayed. These provisions are consistent with current System functionality and are merely adding more detail to the rules to provide additional transparency regarding allocation and priority principles for investors. These provisions are also consistent with the non-inclusion of all-or-none orders and

non-displayed portions of reserve orders in the NBBO.<sup>45</sup>

Next, current Rules 6.45A(d)(i) and 6.45B(d)(i) state the length of the counting period for the quote lock functionality described in each of those paragraphs will be established by the Exchange, may vary by product (*i.e.*, on a class-by-class basis) and will not exceed one second. The proposed rule change adds to proposed Rule 6.45(d)(i) the Exchange may determine on a class-by-class basis whether to apply a counting period, and if so, the length of the counting period, which may not exceed one second. Setting a counting period to zero is consistent with the current rule requiring the time period not exceed one second. Additionally, the rule filing adopting Rule 6.45B, including the quote lock provision in substantially similar form as the current version, indicated the counting period may not exceed one second. In the discussion of this proposed rule provision, it was contemplated the Exchange (at the time through a committee, which committee structure no longer exists on the Exchange), may eliminate the timer (*i.e.*, set it to zero seconds). Additionally, the rule previously required a notification be sent to Market-Makers advising their quotes were locked, *unless the counting period was set to zero seconds* (this provision was later deleted from the Rules).<sup>46</sup> It was understood the counting period could be set to zero, and the proposed rule change merely clarifies this in proposed Rule 6.45(d)(i).

To further simplify the priority and allocation rules, the proposed rule change deletes the following obsolete and duplicative rule provisions:

- Rule 6.13A, Interpretation and Policy .04(ii): The proposed rule change deletes a provision related to a pilot program related to DPM and LMM participation entitlements applicable to executions pursuant to the simple auction liaison (SAL) for classes in which pro-rata was the applicable allocation algorithm. The pilot program expired on December 30, 2010 and was not renewed, and therefore the Exchange believes it is appropriate to delete from the rules.

- Rule 6.45(a)(ii)(4)(ii): This provision relates to bids and offers in excess of an eligibility size for the Exchange's Retail Automatic Execution System

<sup>40</sup> The proposed rule change indicates modifications to a quote only impact the changed side of a two-sided quote; the other side retains priority. Proposed Rule 6.45(a)(iv) is substantially similar to C2 Rule 6.12(e).

<sup>41</sup> Rule 6.53(c) defines a contingency order as a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is at the post.

<sup>42</sup> The System generally bases priority of a non-contingency order on the time the System receives it.

<sup>43</sup> This is consistent with the definition of reserve orders in current Rule 6.53(t) and current Rules 6.45A, Interpretation and Policy .03 and 6.45B, Interpretation and Policy .04. The proposed rule change moves this provision to proposed subparagraph (v)(A) so all provisions of this rule regarding priority of contingency orders are included in the same paragraph. The proposed rule change also adds all-or-none orders to this provision, as those are also not displayed until their contingencies are triggered, similar to the non-displayed portions of reserve orders.

<sup>44</sup> Note other priorities may be applied to the class as well and would function as set forth in the rules.

<sup>45</sup> Proposed Rule 6.45(a)(v) is substantially similar to C2 Rule 6.12(c).

<sup>46</sup> See Securities Exchange Act Release No. 34-51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (SR-CBOE-2004-087) (order approving rules relating to the trading of index options and options on ETFs on the Hybrid Trading System, including the quote lock rule).



(“RAES”).<sup>47</sup> The Exchange no longer uses RAES and thus did not include this provision in proposed Rule 6.45(b).

- Rule 6.45(c): This provision relates to priority principles that apply during opening rotations with respect to orders on the book. Rule 6.2B describes the Exchange’s opening process for the Hybrid System (“HOSS”) applicable to orders and quotes in the book and includes a provision that market orders have first priority and limit orders and quotes have second priority when clearing bids and offers to determine the opening price.<sup>48</sup> The Exchange no longer uses current Rule 6.45(c) for opening rotations with respect to orders on the book, and only uses the process described in Rule 6.2B and thus proposes to delete Rule 6.45(c).<sup>49</sup>

- Rule 6.45(d): This provision includes an allocation provision that applies only when the Rapid Opening System (“ROS”) is used to open a class.<sup>50</sup> The Exchange no longer uses ROS to open classes and only uses HOSS. Therefore, the Exchange believes this provision is no longer necessary and thus did not include it in proposed Rule 6.45.<sup>51</sup>

- Rule 6.45, Interpretation and Policy .01: This provision relates to holding a market order to sell on the floor when there is a customer order in the book at the minimum increment. By definition, the market order would sell at the best bid. Additionally, pursuant to Rule 6.53(g), orders entrusted to a floor broker are considered not held unless otherwise specified. The customer order in the book would have priority to sell against a bid of the minimum increment. If there was a remainder of that bid at the minimum increment after execution against the customer order, the market order would sell at the minimum increment as well, as that is the best (lowest) price at which it could trade. Therefore, this provision is no longer necessary, the Exchange proposes to delete it.

<sup>47</sup> See Rule 6.8 regarding RAES operations.

<sup>48</sup> See Rule 6.2B(c)(iv). The Exchange notes current Rule 6.45(c) applies to public customer orders while Rule 6.2B(c)(iv) does not. However, the distinction relates to the fact that the electronic book used to be for public customer orders, while the electronic book now contains all orders, including public customer orders, and thus Rule 6.2B does not include this distinction. To the extent the Exchange applies the public customer priority overlay to the electronic allocation algorithm for a class, the priority in this provision will apply to public customer orders.

<sup>49</sup> The proposed rule change deletes a corresponding reference to this provision in Rule 6.53(c)(ii)(3).

<sup>50</sup> See Rule 6.2A for a description of ROS.

<sup>51</sup> The proposed rule change makes a corresponding change to Rule 6.2A(a)(ii) to delete the reference to Rule 6.45(d).

- Rules 6.45A(a)(ii)(2)(C) and 6.45B(a)(i)(2)(C): This provision states, in establishing the counterparties to a particular trade, the participation entitlement must first be counted against the Market-Maker’s highest priority bids or offers. For a Market-Maker to receive an entitlement, it must have a quote at the BBO. It is common for a Market-Maker firm to have multiple individual Market-Makers submitting quotes within a class.<sup>52</sup> If a Market-Maker firm has multiple quotes at the BBO, those quotes are treated as separate individual quotes (and are not aggregated for the firm), and those quotes are subject to the same priority principles as all other quotes, and thus an entitlement will apply to the quotes with highest priority. Therefore, the Exchange believes the general allocation and priority rules provide that contracts are allocated to quotes with the highest priority and thus believes this provision is redundant.

- Rules 6.45A(c) and 6.45B(c): This provision relates to the interaction of market participants’ quotes and orders with electronic orders, including an allocation based on orders or quotes submitted within a period of time not to exceed five seconds of the first market participant to submit an order (the “N-second group”). This was part of the allocation process upon initial implementation of the Hybrid System on the Exchange, pursuant to which the System managed orders and quotes for a period prior to their interaction and execution. The Exchange no longer uses this delay and instead applies the allocation and priority rules in proposed Rule 6.45(a) and (b) apply to all quotes and orders submitted on the Exchange. Because the Exchange no longer uses the concept of the N-second group, this provision is not included in proposed Rule 6.45.<sup>53</sup>

- Rule 6.45A(e): This provision states the Exchange intends to implement Hybrid floorwide in all other equity classes by the fourth quarter of 2006. This transition occurred numerous year ago, and all classes currently trade on the Hybrid or Hybrid 3.0 system, rendering this provision no longer necessary.

The proposed rule change amends Rule 6.53C(d)(v)(1), (3) and (4) regarding the execution of complex order auction (“COA”)-eligible orders by indicating order and response sizes will be capped

for allocation purposes. A similar requirement exists for other auctions, such as SAL,<sup>54</sup> to prevent a Trading Permit Holder submitting an order or auction response from submitting such an order or response with an extremely large size in order to obtain a larger pro-rata share of the auctioned order. The Exchange believes it is appropriate to similarly cap the size of orders and responses for allocation purposes for COA.

The proposed rule change makes additional technical and nonsubstantive changes in various rules amended by this rule filing, including to make the language describing the allocation principles consistent throughout, to make the rule text plain English, to use defined terms, to clarify rules that apply to orders and quotes (when in the context, it is apparent the rule should not apply to just orders), and to use consistent lettering and numbering for subparagraphs within the rules.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>55</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>56</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>57</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change amends allocation and priority rules (including the addition of defined terms) to condense and simplify the allocation and priority rules, delete obsolete and duplicative rule text, add detail to certain provisions regarding current System functionality, and make technical and nonsubstantive changes

<sup>52</sup> Pursuant to the CBOE Fees Schedule, a Market-Maker Trading Permit provides up to three logins.

<sup>53</sup> The proposed rule change makes a corresponding change to Rule 6.53C, Interpretation and Policy .06(c) to delete a reference to the inapplicability of the N-second group timer to stock-option orders.

<sup>54</sup> See, e.g., Rule 6.13A(c)(ii).

<sup>55</sup> 15 U.S.C. 78f(b).

<sup>56</sup> 15 U.S.C. 78f(b)(5).

<sup>57</sup> *Id.*



(such as conform language, make language more plain English and use consistent lettering and numbering), which transparency and simplification protects investors and perfects the mechanism of a free and open market. The changes to UMA, which is proposed to be called aggregated pro-rata, are intended to delete the various components of that algorithm that are no longer in use. UMA with 100% weighted to Component B with the standard participation entitlement (rather than modified participation entitlement) applies to numerous classes today. The Exchange has not applied Component A or the modified participation entitlement in years, and has no intention of doing so, and thus believes it will benefit investors to simplify the rules to include only the components of the algorithm that are in use. The proposed change regarding how the System rounds the number of contracts when they cannot be allocated proportionally in whole numbers pursuant to the pro-rata algorithm (which previously only addressed the situation if there one additional contract for two market participants) and proposed aggregated pro-rata algorithm (which previously was silent on this matter) adds detail to the rules regarding the allocation process and provides a fair, objective manner for rounding and distribution in all situations in which the number of contracts many not be allocated proportionally in whole numbers. Distributing contracts to resting orders and quotes in time priority when they cannot be allocated proportionally in whole numbers is also consistent with the rules of another options exchange.<sup>58</sup> The Exchange believes adding these details while simplifying the rules, as well as the technical and nonsubstantive changes to the rules, will better enable investors to understand how the System allocates trades and affords priority. The proposed rule change does not change how the System allocates and prioritizes orders and quotes; thus, orders and quotes will be subject to the same priority principles as they are today.

The proposed rule changes providing a PMM's, LMM's or DPM's participation right is determined in part by how many Market-Maker quotes and non-public customer orders are at the BBO, and that broker-dealer orders at the same price will be treated as one broker-dealer order, is not only consistent with current System functionality (and the UMA allocation algorithm, proposed to be renamed the aggregated allocation algorithm, which algorithm applies

along with a participation entitlement to most classes), but also encourages all Market-Makers, not just Trading Permit Holders, to continue to provide liquidity to the market because it may provide them with the opportunity to participate in a larger portion of a trade in which a PMM, LMM or DPM has a participation right (70% v. 60% v. 50%), which liquidity will ultimately benefit investors. PMMs, LMMs and DPMs will still be entitled to a significant participation right of 30%, 40% or 50%, as applicable, which continues to provide an appropriate balance with their heightened quoting obligations. The proposed rule change that the PMM, LMM or DPM participation entitlement may not be fewer than one contract when there are other Market-Maker quotes or non-Public Customer orders ensures PMMs, LMMs and DPMs will receive a benefit in exchange for their heightened quoting obligations when executions involve small number of contracts.

The proposed rule changes regarding the decrementation of an order or quote following partial execution, the priority of modified orders and quotes, and the priority of contingency orders, are consistent with current System functionality. The additional detail provides transparency of this functionality to the Rules, which benefits investors. These proposed rule changes are consistent with the rules of another options exchange.<sup>59</sup>

The proposed rule change regarding the length of the counting period for the quote lock functionality is consistent with a previous rule filing regarding this functionality, which accounted for the possibility of having the counting period set to zero seconds. The proposed rule change merely clarifies this possibility in the Rules. The proposed rule change to cap orders and auction responses for allocation purposes for COA is consistent with another auction on CBOE (SAL) and promotes just and equitable principles of trade ensuring Trading Permit Holders may not submit orders and responses of large sizes to obtain a larger pro-rata share of an auctioned order.

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

CBOE does not believe 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 is consistent with how the System currently executes and prioritizes orders and quotes and

primarily simplifies the allocation and priority rules, adds detail to the rules regarding current System functionality, and eliminates duplicative and obsolete rule text. Thus, the System will allocate orders and quotes under the proposed rule change in the same manner as it does today. These allocation and priority rules apply in the same manner to the orders and quotes of all Trading Permit Holders (and PAR Officials), and the additional transparency and simplification in the rules benefits all investors. The proposed rule change has no impact on intermarket competition, as it applies to the allocation of orders and quotes executed on CBOE. Additionally, as discussed above, certain provisions of the proposed rule change are substantially similar to those of another options exchange.

#### *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>60</sup> and Rule 19b-4(f)(6)<sup>61</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.

<sup>58</sup> See C2 Rule 6.12(a)(2).

<sup>59</sup> See C2 Rule 6.12(c)-(e).

<sup>60</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>61</sup> 17 CFR 240.19b-4(f)(6).

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-CBOE-2017-009 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-2017-009. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2017-009 and should be submitted on or before March 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>62</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-02836 Filed 2-10-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #15033 and #15034]**

**Georgia Disaster Number GA-00090**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA-4297-DR), dated 01/26/2017.

*Incident:* Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

*Incident Period:* 01/21/2017 through 01/22/2017.

*DATES:* *Effective Date:* 02/03/2017.

*Physical Loan Application Deadline Date:* 03/27/2017.

*EIDL Loan Application Deadline Date:* 10/26/2017.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Georgia, dated 01/26/2017 is hereby amended to update the incident to Severe Storms, Tornadoes, Straight-line Winds, and Flooding and to include the following areas as adversely affected by the disaster:

*Primary Counties:* (Physical Damage and Economic Injury Loans): Thomas, Worth.

*Contiguous Counties:* (Economic Injury Loans Only): Georgia: Grady.

Florida: Jefferson, Leon.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2017-02825 Filed 2-10-17; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #15039 and #15040]**

**South Dakota Disaster #SD-00073**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA-4298-DR), dated 02/01/2017.

*Incident:* Severe Winter Storm.

*Incident Period:* 12/24/2016 through 12/26/2016.

*Effective Date:* 02/01/2017.

*Physical Loan Application Deadline Date:* 04/03/2017.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/01/2017.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 02/01/2017, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Butte, Clark, Codington, Day, Deuel, Dewey, Edmunds, Fall River, Faulk, Grant, Haakon, Hamlin, Harding, Jackson, Jones, Marshall, McPherson, Meade, Pennington, Perkins, Roberts, Stanley, Sully, Ziebach.

The Cheyenne River Sioux Tribe within Dewey and Ziebach Counties and the Oglala Sioux Tribe with Jackson County.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations With Credit Available Elsewhere ...	2.500
Non-Profit Organizations Without Credit Available Elsewhere .....	2.500
<i>For Economic Injury:</i>	
Non-Profit Organizations Without Credit Available Elsewhere .....	2.500

The number assigned to this disaster for physical damage is 15039B and for economic injury is 15040B.

<sup>62</sup> 17 CFR 200.30-3(a)(12).