

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79423; File No. SR-CBOE-2016-078]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Disaster Recovery

November 29, 2016.

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 November 16, 2016, Chicago Board Options Exchange, Incorporated (“CBOE” or the “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. On November 28, 2016, the Exchange filed Amendment No. 1 to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes to amend Rule 6.18 relating to disaster recovery. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose Background

The Exchange adopted Rule 6.18 in 2006 for the limited purpose of providing alternative means of operation in the event of a physical disaster. In particular, Rule 6.18, as originally adopted, was intended to deal with trading floor closures, providing for the operation of a “Disaster Recovery Facility” (“DRF”) in the event that a disaster or other unusual circumstance rendered the trading floor inoperable.⁴ Under original Rule 6.18, if the Exchange were forced to halt trading due to a disaster or other physical impairment of its trading floor, the Exchange and its members⁵ could operate remotely in a screen-based only environment from the DRF while the trading floor was unavailable. While operating from the DRF, open outcry trading would be suspended.

In 2012, Rule 6.18 was amended in connection with the Exchange’s relocation of its primary data center to the East Coast and the consequent conversion of its former primary data center to a back-up data center in Chicago.⁶ Specifically, Rule 6.18 was amended to address other situations in which the primary data center could continue to operate despite the trading floor being rendered inoperable or in which the back-up data center might be

used despite the trading floor being operational. Specifically, as amended, Rule 6.18 provided that in the event that the Exchange were forced to switch operations to the back-up data center, the Exchange’s trading floor could still be used and that in the event that the trading floor were inoperable, the Exchange could still operate using a floorless configuration or screen-based only environment on the Exchange’s primary data center. References to the DRF and other irrelevant portions of the original rule were eliminated or replaced with references to Exchange’s primary and back-up data centers as appropriate.

In 2015, Rule 6.18 was again amended to add greater detail to the Exchange’s disaster recovery rules and harmonize the disaster recovery rules with newly implemented disaster recovery-related regulatory imperatives of Regulation Systems Compliance and Integrity (“Regulation SCI”), which superseded and replaced the SEC’s voluntary Automation Review Policy.⁷ In doing so, the Exchange made certain changes to Rule 6.18 to provide additional details regarding the Exchange’s back-up trading systems, business continuity and disaster recovery plans, and testing and update its disaster recovery rules to ensure consistency with Regulation SCI.

The Exchange now proposes to make additional changes to provide the Exchange authority to take additional steps necessary to preserve the Exchange’s ability to conduct business in the event that the Exchange’s data centers become inoperable or otherwise unavailable for use due to a significant systems failure, disaster or other unusual circumstances and make clear in the Rules the intermediary steps that the Exchange may take to disable certain systems and users’ connectivity while continuing to operate its primary data center. The Exchange believes this authority serves the interests of all investors and the general public, because it helps the Exchange ensure its continuous operation and ability to maintain fair and orderly markets in the event of a

⁴ See Securities Exchange Act Release No. 54171 (July 19, 2006), 71 FR 42427 (July 26, 2006) (Order Approving Proposed Rule Change and Amendment No. 1 Thereto Regarding a Disaster Recovery Facility) (SR-CBOE-2006-001).

⁵ Prior to its demutualization in 2010, the Exchange was a member-owned organization. See Securities Exchange Act Release No. 62382 (June 25, 2010), 75 FR 38164 (July 1, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Conforming Changes in Connection With Demutualization) (SR-CBOE-2010-058). Individuals and organizations that may trade on CBOE are now referred to as Trading Permit Holders (“TPHs”).

⁶ See Securities Exchange Act Release No. 68301 (November 27, 2012), 77 FR 71650 (December 3, 2012) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend CBOE Rule 6.18 Concerning the Exchange’s Disaster Recovery Facility) (SR-CBOE-2012-111).

⁷ See Securities Exchange Act Release No. 76203 (October 20, 2015), 80 FR 65258 (October 26, 2015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Disaster Recovery) (SR-CBOE-2015-088); see also Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR at 72252 (December 5, 2014) (Regulation Systems Compliance and Integrity) (File No. S7-01-13); Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) (Automated Systems of Self-Regulatory Organizations) (File No. S7-29-89); Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (Automated Systems of Self-Regulatory Organizations) (File No. S7-12-91).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange provided in new footnote 11 additional explanation about how its business continuity and disaster recovery plans are reasonably designed to achieve two-hour resumption of trading systems essential to conducting business on the Exchange.

significant systems failure or other unusual circumstance.

Proposal

The Exchange proposes to amend Rule 6.18 relating to disaster recovery. Specifically, the Exchange proposes to make changes to Rule 6.18 to: (1) Allow the Exchange to establish additional temporary requirements applicable to certain market participants to help ensure the operation of fair and orderly markets during use of the Exchange's back-up data center; (2) provide that the Exchange may determine to temporarily operate in an exclusively floor-based environment via open outcry in order to preserve the Exchange's ability to conduct business in the event that the Exchange's data centers become inoperable or otherwise unavailable for use due to a significant systems failure, disaster, or other unusual circumstances; (3) permit the Exchange to deactivate certain nonessential systems and systems functionalities in response to limited systems disruptions or malfunctions, security intrusions, systems compliance issues, or other unusual circumstances; and (4) permit the Exchange to restrict access of a TPH or associated person to the Hybrid Trading System⁸ and other Exchange systems if such access poses a significant threat to the Exchange's ability to operate systems essential to maintain a fair and orderly market.

The Exchange proposes to add new Rule 6.18(b)(iv)(B) (Alternative BCP/DR Participant Obligations), which would provide that the Exchange may, if necessary for the maintenance of fair and orderly markets, establish additional temporary requirements applicable to Designated BCP/DR Participants⁹ and/or other market

⁸ Under Rule 1.1(aaa), the "Hybrid Trading System" refers to (i) the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes and (ii) any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub.

⁹ Under Rule 6.18(b)(iv)(A), Designated BCP/DR Participants are defined as designated TPH that the Exchange determines are, as a whole, necessary for the maintenance of fair and orderly markets in the event of the activation of the Exchange's business continuity and disaster recovery plans. Rule 6.18(b)(iv)(A)(1) and (2) provide that Designated BCP/DR Participants will be identified based on criteria determined by the Exchange and announced via Regulatory Circular, which may include whether the TPH is an appointed Designated Primary Market-Maker ("DPM"), Lead Market-Maker ("LMM") or Market-Maker in a class and the quality of markets provided by the DPM, LMM, or Market-Maker, the amount of volume transacted by the market participant in a class or on the Exchange in general, operational capacity, trading experience, and historical contribution to fair and orderly markets on the Exchange and shall include, at a minimum, all Market-Makers in option classes

participants during use of the back-up data center. Proposed Rule 6.18(b)(iv)(B) is intended as an extension of the Exchange's authority under current Rule 6.18(b)(iv) (Trading Permit Holder Participation), which requires TPHs to take appropriate actions as instructed by the Exchange to accommodate the Exchange's ability to conduct business via the back-up data center. The Exchange believes this extended authority would afford the Exchange with necessary flexibility to address any unexpected contingencies that may arise if a disaster or other unusual circumstances occur, causing the Exchange to use the back-up data center.

For example, if circumstances that led to use of the back-up data center also caused a decrease in liquidity on the Exchange, the Exchange might determine that it is necessary, in the interests of fair and orderly markets, to temporarily heighten the quoting obligations of Market-Makers or tighten bid/ask differentials during the use of the back-up data center to enhance liquidity and continue to provide a viable, competitive marketplace. Proposed Rule 6.18(b)(iv)(B) would give the Exchange authority to take these types of action to help ensure the maintenance of a fair and orderly market in the event the Exchange were to switch operations to the back-up data center. In such cases, the Exchange would notify market participants of any such additional temporary requirements prior to implementation in a reasonable manner as determined by the Exchange.¹⁰ The Exchange also proposes non-substantive changes to the lettering in paragraph (b)(iv) to accommodate the addition of new Rule 6.18(b)(iv)(B). Accordingly, current Rule 6.18(b)(iv)(B) would become Rule 6.18(b)(iv)(C), and current Rule 6.18(b)(iv)(C) would become Rule 6.18(b)(iv)(D).

The Exchange proposes to add Rule 6.18(c) (Operation via Open Outcry), which would provide that if the Exchange's data centers become inoperable or otherwise unavailable for use due to a significant systems failure, disaster or other unusual circumstances, the Exchange may temporarily operate in an exclusively floor-based environment via open outcry in order to preserve the Exchange's ability to

exclusively listed on the Exchange that stream quotes in such classes and all DPMs in multiply listed option classes.

¹⁰ The Exchange would make these notifications on the Systems Notification page on the Exchange's Web site, via the Exchange's Order Management Terminals ("OMTs"), via an Exchange-used messaging service, and/or other reasonable notification mechanisms.

conduct business.¹¹ Similar to the Exchange's authority in current Rule 6.18(c) (proposed Rule 6.18(d)), which permits the Exchange to operate in a screen-based only environment if the trading floor facility is inoperable, proposed Rule 6.18(c) would afford the Exchange necessary flexibility to temporarily operate in open outcry in the event that the Exchange's data centers are inoperable due to a significant systems failure, disaster, or other unusual circumstances. The Exchange believes that the providing authority for it to temporarily operate in an exclusively floor-based environment in such a situation would help ensure the Exchange's ability to continue to conduct business and help preserve the Exchange's ability to continuously provide a fair and orderly market. The Exchange also proposes non-substantive changes to the lettering in Rule 6.18 to accommodate the addition of new Rule 6.18(c). Accordingly, current Rule 6.18(c) would become Rule 6.18(d).

The Exchange also proposes to add Rule 6.18(e) (Deactivation of Certain Systems), which would provide that in the event of a systems disruption or malfunction, security intrusion, systems compliance issue, or other unusual circumstances, the Exchange may, in accordance with the Rules or if necessary to maintain fair and orderly markets or to protect investors, temporarily deactivate certain systems or systems functionalities that are not essential to conducting business on the Exchange. Many of the systems and systems functionalities described in the Rules are provided optionally by the Exchange to enhance participants' trading experience, but are not required to be active under the Rules and are not

¹¹ In accordance with Rule 1001(a)(2)(v) of Regulation SCI, the Exchange maintains written policies and procedures reasonably designed to ensure that its trading systems (including with respect to both the Exchange's primary and back-up data center trading systems), have levels of capacity, integrity, resiliency, availability, and security adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets, including, but not limited to business continuity and disaster recovery plans that are reasonably designed to achieve next two-hour resumption of its critical SCI systems, as defined in Rule 1000 of Regulation SCI. See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (Regulation Systems Compliance and Integrity) (File No. S7-01-13). Notably, the Exchange employs business continuity and disaster recovery standards reasonably designed to achieve two-hour resumption of all trading systems that are essential to conducting business on the Exchange and which the Exchange believes are reasonably designed to support resumption in a significantly shorter amount of time, including, but not limited to with respect to those systems that are essential to the trading of proprietary products and products exclusively licensed for trading on the Exchange.

necessary for the Exchange to conduct business.¹² As is described in the Rules, many of the Exchange's systems functionalities may be made available (or unavailable) by the Exchange on a class-by-class basis. Such systems and systems functionalities that are non-essential to conducting business on the Exchange include, but are not limited to, Public Automated Routing ("PAR")¹³ workstations, the Automated Improvement Mechanism ("AIM"),¹⁴ and the Solicitation Auction Mechanism ("SAM").¹⁵

In addition, the activation of other functionalities may not be described by rule, but could be suspended temporarily (e.g., until the end of a trading session or until systems disruptions could be remedied) if disruption or malfunction of that functionality were to interfere with the Exchange's ability to conduct business in a fair and orderly manner. For example, if a certain order type were to cause a wider system malfunction or a certain complex order product could not be created without triggering widespread systems issues¹⁶ the Exchange might announce, via its systems status page or otherwise, the suspension of the availability of that order type or complex product. If such an event impacts a non-essential system or system functionality, the Exchange may deem it necessary to maintain fair and orderly markets to deactivate that system or functionality until any issues or [sic] resolved to prevent any potential harm to investors. Proposed Rule 6.18(e) would also provide that the Exchange would notify market participants of any such deactivation, and subsequent reactivation, promptly and in a reasonable manner determined by the Exchange. The Exchange may make these notifications on the Systems Notification page on the Exchange's Web site, via OMT, via an Exchange-used messaging service such as SendWordNow¹⁷ Regulatory Circular, and/or other reasonable notification mechanisms.

Finally, the Exchange proposes Rule 6.18(f) (Connectivity Restriction), which would permit the Exchange to

temporarily restrict a TPH's or associated person's access to the Hybrid Trading System or other electronic trading systems if it is determined by the President (or designee) of the Exchange, that because of a systems issue, such access threatens the Exchange's ability to operate systems essential to the maintenance of fair and orderly markets. Such access would remain restricted until the end of the trading session or an earlier time if the President (or designee) of the Exchange, in consultation with the affected TPH(s), determines that lifting the restriction no longer poses a threat to the Exchange's ability to operate systems essential to conducting business or continuing to maintain a fair and orderly market on the Exchange or investors. In the current electronic trading environment, if a TPH's systems malfunctions or is compromised, it could disrupt the Exchange's systems or market or harm other investors. For example, software malfunctions may pose a risk to the Exchange's systems, investors, and the general public without proper risk controls. Proposed Rule 6.18(f) would simply give the Exchange the authority to activate additional risk controls to stem the access of a TPH that has experienced a systems disruption or malfunction, which poses undue risk to the Exchange.

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.¹⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁹ 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)²⁰ requirement that the rules of an exchange not be designed

to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is designed to promote the Exchange's ability to ensure the continued operation of a fair and orderly market in the event of a systems failure, disaster, or other unusual circumstances that might threaten the ability to conduct business on the Exchange. The Exchange recognizes that switching operations to the back-up data center may occur in times of uncertainty or great volatility in the markets. It is at these times that the investors may have the greatest need for viable, trustworthy marketplaces. The proposed rule change seeks to ensure that such a marketplace will exist when most needed and thus, the Exchange believes that the proposed rule protects investors in the most fundamental sense.

In particular, the Exchange believes that proposed Rule 6.18(b)(iv)(B) allowing it to establish additional temporary requirements applicable to Designated BCP/DR Participants and/or other market participants during use of the back-up data center is consistent with the Act in that additional temporary requirements such as heightened quoting obligations for Market-Makers or more constricted bid-ask differentials would help ensure the maintenance of a fair and orderly market in the event of a disaster, which is in the interests of all market participants, investors, and the general public. The Exchange believes that adopting rules that help ensure that markets are open and available during times of turmoil and emergency is an important goal consistent with the Act. In the same vein, the Exchange believes that proposed Rule 6.18(c) to temporarily operate in an exclusively floor-based environment via open outcry in order to preserve the Exchange's ability to conduct business serves the interests of market participants, investors, and the general public by helping to ensure that the Exchange's market remains open and available for trading. The Exchange also believes that deactivation of certain systems in proposed Rule 6.18(e), whether by rule or otherwise, in order to ensure that the Exchange is able to provide a fair and orderly market in the face of systems disruptions and malfunction is in the best interests of market participants, investors, and the general public.

Similarly, the Exchange believes that the proposed connectivity restriction in proposed Rule 6.18(f) would help ensure that the Exchange remains open and available to all market participants. The Exchange notes that similar [sic]

¹² See, e.g., Rules 6.2, 6.2A, 6.2B, 6.12, 6.13, 6.13A, 6.13B, 6.14A, 6.53, 6.53C, 6.74A, and 6.74B.

¹³ See generally Rule 6.12, Rule 6.12A.

¹⁴ See generally Rule 6.74A.

¹⁵ See generally Rule 6.74B.

¹⁶ For example, if the creation of a certain complex order product (e.g. the October/November calendar spread in class XYZ) were to cause significant trading disruptions in an entire class (e.g., trading in all of XYZ) [sic]. Notably, under such circumstances, these products would still be available via other means such as legging.

¹⁷ See CBOE Regulatory Circular RG14-030 (Send Word Now Smart Notification Services).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ *Id.*

connectivity restrictions are already in place on the Exchange.²¹ Furthermore, the Exchange believes that proposed Rule 6.18(f) is consistent with Section 6(b)(7)²² of the Act, which requires the Exchange to adopt rules that provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof. The Exchange notes that proposed Rule 6.18(f) is not aimed at denying access to a particular TPH, but rather making sure that the Exchange remains accessible to all other TPHs that do not threaten the Exchange's ability to conduct normal business operations. The Exchange notes that as soon as the Exchange, working with the TPH organization that poses a threat to the Exchange, were able to confirm that the TPH organization no longer posed such a threat, access to the Exchange would be restored to that TPH. The Exchange believes that this is a fair result and is [sic] the best interests of all market participants, investors, and the general public.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade by adding detail and clarity to the Rules. The proposed rule change seeks to provide additional clarity to the Exchange's disaster recovery rules, putting all market participants on notice as to how the Exchange will function in case of significant systems disruption or other disaster situation. The Exchange is continuously updating the Rules to provide additional detail, clarity, and transparency regarding its operations and trading systems and regulatory authority. The Exchange believes that the adoption of detailed, clear, and transparent rules reduces burdens on competition and promotes just and equitable principles of trade. The Exchange also believes that adding greater detail to the Rules regarding the Exchange's ability to ensure the continuous operation of the market and preserve the ability to conduct business on the Exchange will increase confidence in the markets and encourage wider participation in the markets and greater investment.

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

The Exchange 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. Rather, the proposed rule change will help ensure that competitive markets remain operative in the event of a systems failure or other disaster event. The Exchange notes that the proposed rule change is designed to provide the Exchange with authority to require market participants to participate in, and provide necessary liquidity to, the market to ensure that the Exchange functions in a fair and orderly manner in the event of a significant systems failure, disaster, or other unusual circumstances. Accordingly, the Exchange believes that the proposed rule change is designed to ensure fair and competitive markets at time when they may be most needed.

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 written comments on the proposed rule change.

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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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 arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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-2016-078 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-CBOE-2016-078. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2016-078, and should be submitted on or before December 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736

Extension:

²³ 17 CFR 200.30-3(a)(12).

²¹ See Rules 6.23A(b); 6.23C(a).

²² 15 U.S.C. 78f(b)(7).