

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68944; File No. SR-CBOE-2013-019]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Market-Maker Continuous Quoting Obligations

February 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 4, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Rules relating to Market-Maker continuous quoting obligations. 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.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The purpose of the proposed rule change is to add language to Exchange

Rules 8.7, 8.13, 8.15A, 8.85, and 8.93 to exclude intra-day add-on series ("Intra-day Adds") on the day during which such series are added for trading from Market-Makers'<sup>3</sup> quoting obligations.<sup>4</sup> Additionally, the proposed rule change clarifies in Rules 8.13, 8.15B, and 8.87 that Preferred Market-Makers ("PMMs")<sup>5</sup>, Lead Market-Makers ("LMMs")<sup>6</sup>, and Designated Primary Market-Makers ("DPMs")<sup>7</sup> and electronic DPMs ("e-DPMs")<sup>8</sup>,

<sup>3</sup> See Exchange Rule 8.1, which defines a "Market-Maker" as "an individual Trading Permit Holder or a TPH organization that is registered with the Exchange for the purpose of making transactions as a dealer specialist on the Exchange. \* \* \*"

<sup>4</sup> The Exchange recently proposed to, among other things, (a) reduce to 90% the percentage of time for which a Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day and (b) to increase to the lesser of 99% or 100% minus one call-put pair the percentage of series in which Lead Market-Makers, Designated Primary Market-Makers and Electronic Designated Primary Market-Makers must provide continuous electronic quotes in their appointed classes, which proposed rule change was immediately effective upon filing. See Securities Exchange Act Release No. 67410 (July 11, 2012), 77 FR 42040 (July 17, 2012) (SR-CBOE-2012-064); see also Securities Exchange Act Release No. 67644 (August 13, 2012), 77 FR 49846 (August 17, 2012) (SR-CBOE-2012-077) (immediately effective rule change to delay the implementation date of the proposed rule change in rule filing SR-CBOE-2012-064 and to indicate that the Exchange will announce the new implementation date by Regulatory Circular); see also Securities and Exchange Act Release No. 68218 (November 13, 2012), 77 FR 69667 (November 20, 2012) (SR-CBOE-2012-106) (immediately effective rule change to further delay the implementation date of the proposed rule change in rule filing SR-CBOE-2012-064 and to indicate that the Exchange will announce the new implement date by Regulatory Circular). In addition, the Exchange recently filed an effective rule proposing to exclude series that have a time to expiration of nine months or more from Exchange Preferred Market Maker's continuous quoting obligation. See Securities and Exchange Act Release No. 68691 (January 18, 2013), 78 FR 5548 (January 25, 2013) (SR-CBOE-2013-008). The rule text in this filing includes the effective (but not implemented) changes to the rule text made by rule filings SR-CBOE-2012-064 and SR-CBOE-2013-008. The Exchange expects to implement the effective rule changes to quoting obligations in filings SR-CBOE-2012-064 and SR-CBOE-2013-008 in conjunction with the implementation of the proposed rule change in this filing.

<sup>5</sup> See Exchange Rule 8.13, which defines a "Preferred Market-Maker" as a specific Market-Maker designated by a Trading Permit Holder to receive that Trading Permit Holder's orders in a specific class.

<sup>6</sup> See Exchange Rule 8.15A, which defines a "Lead Market-Maker" as a Market-Maker in good standing appointed by the Exchange "in an option class for which a DPM has not been appointed \* \* \*"

<sup>7</sup> See Exchange Rule 8.80, which defines a "Designated Primary Market-Maker" as a "TPH organization that is approved by the Exchange to function in allocated securities as a Market-Maker \* \* \* and is subject to the obligations under Rule 8.85 \* \* \*"

<sup>8</sup> See Exchange Rule 8.92, which defines an "Electronic DPM" as a "TPH Organization that is

respectively (Market-Makers, PMMs, LMMs, DPMs and e-DPMs are collectively referred to in this filing as "Market-Makers" unless the context provides otherwise) may still receive participation entitlements pursuant to those Rules in all Intra-day Adds on the day during which such series are added for trading in which they are quoting provided that Market-Maker meets all other entitlement requirements as set forth in the applicable rule.

Intra-Adds are series that are be [sic] added to the Exchange system after the opening of the Exchange. These series may be added throughout the trading day which differs from other newly added series which are only added prior to the beginning of trading. In the event a series is added after the open of trading on the Exchange, the Exchange, in real time, disseminates a message to the Exchange application program interfaces, which any Exchange Trading Permit Holder ("TPH") can receive, that a new series has been listed. In addition, there is a corresponding product state change message disseminated when the new series moves from pre-opening rotation to an open state. Any Market-Maker with an appointment in the class in which the series was added is permitted to quote in the new series.

Currently, Exchange Rules 8.7, 8.13, 8.15A, 8.85, and 8.93 impose certain obligations on Market-Makers, PMMs, LMMs, DPMs, and e-DPMs, respectively, including obligations to provide continuous electronic quotes. Upon implementation of the recent rule change to Market-Maker's continuous quoting obligations,<sup>9</sup> Rules 8.7, 8.13, 8.15A, 8.85, and 8.93 will require that Market-Makers generally maintain continuous electronic quotes as follows:

- Rule 8.7(d)(ii)(B) will require that Market-Makers provide continuous electronic quotes when quoting in a particular class on a given trading day in 60% of the non-adjusted option series of the Market-Maker's appointed class that have a time to expiration of less than nine months;

- Rule 8.13(d) will require that PMMs provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% or 100% minus one call-put pair<sup>10</sup> of the non-adjusted option series that have an expiration time of less than nine months

approved by the Exchange to remotely function in allocated option classes as a DPM and to fulfill certain obligations required of DPMs \* \* \*"

<sup>9</sup> See *supra* note 4.

<sup>10</sup> A "call-put pair" is one call and one put that cover the same underlying instrument and have the same expiration date and exercise price.

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

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

of each class for which it receives Preferred Market-Maker orders;

- Rule 8.15A(b)(i) will require that LMMs provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% or 100% minus one call-put pair of the non-adjusted option series within their assigned classes;
- Rule 8.85(a)(i) will require DPMs to provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% or 100% minus one call-put pair of the non-adjusted option series of each class allocated to it; and
- Rule 8.93(i) will require e-DPMs to provide continuous electronic quotes when the Exchange is open for trading in at least the lesser of 99% or 100% minus one call-put pair of the non-adjusted option series of each allocated class.

Exchange Rules 8.13, 8.15B, and 8.87 provide that PMMs, LMMs, and DPMs, and e-DPMs, respectively, generally will receive the following participation entitlements in their assigned classes when quoting at the best price if they satisfy their obligations and other conditions set forth in the rules:

- Rule 8.13(c) provides that a PMM will receive a participation entitlement of 40% when there are two or more Market-Makers quoting at the best price on the Exchange and 50% when there is only one other Market-Maker quoting at the best price on the Exchange;
- Rule 8.15B(c) provides that an LMM will receive a participation entitlement of 50% when there is one Market-Maker also quoting at the best price on the Exchange, 40% when there are two Market-Makers also quoting at the best price on the Exchange, and 30% when there are three or more Market-Makers also quoting at the best price on the Exchange;<sup>11</sup> and
- Rule 8.87(b)(2) provides that the collective DPM/e-DPM participation entitlement will be 50% when there is one Market-Maker also quoting at the best price on the Exchange, 40% when there are two Market-Makers also quoting at the best price on the Exchange, and 30% when there are three or more Market-Makers also quoting at the best price on the Exchange.<sup>12</sup>

<sup>11</sup> If more than one LMM is entitled to a participation entitlement, the entitlement will be distributed equally among eligible LMMs.

<sup>12</sup> The participation entitlements of PMMs, LMMs, DPMs and e-DPMs are based on the number of contracts remaining after all public customer orders in the book at the best price on the Exchange have been satisfied. Additionally, a PMM, LMM, DPM or e-DPM may not be allocated a total quantity greater than the quantity for which the PMM, LMM,

Once the Exchange implements the rule change referenced above, Exchange Rule 1.1(ccc) will provide that a Market-Maker who is obligated by Exchange Rules to provide continuous electronic quotes will be deemed to have provided "continuous electronic quotes" if the Market-Maker provides electronic two-sided quotes for 90% of the time that the Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day. The rule will still provide that if a technical failure or limitation of a system of the Exchange prevents the Market-Maker from maintaining, or from communicating to the Exchange, timely and accurate electronic quotes in a class, the duration of such failure will not be considered in determining whether the Market-Maker has satisfied the 90% quoting standard with respect to that option class. In addition, the rule will still provide that the Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.<sup>13</sup>

In order to comply with their continuous quoting obligations, Exchange Market-Makers have automated systems in place that use complex calculations based on a variety of market factors to compute quotes in their appointed classes and transmit these quotes to the Exchange's Hybrid Trading System (the "System").<sup>14</sup> Their system computations also factor in their market risk models. Several Market-Makers have communicated to the Exchange that their trading systems do not automatically produce continuous quotes in Intra-day Adds on the trading day during which those series are added. They further indicated that the only way they could quote in these series on the trading day during which they were added would be to completely shut down and restart their systems. As a result, it is the Exchange's understanding that several Market-Makers do not currently quote Intra-day Adds during the trading day on which such series are added (although the Market-Makers generally do quote these series upon the opening of the next trading day, assuming those series are still listed on the Exchange). The required work on Market-Makers'

DPM or e-DPM is quoting at the best price. See Rules 8.13(c)(i) and (ii) (PMMs), 8.15B(b) and (c) (LMMs), and 8.87(b)(1)(ii) and (iii) (DPMs and e-DPMs).

<sup>13</sup> See *supra* note 4.

<sup>14</sup> "Hybrid Trading System" refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes. See Rule 1.1(aaa).

systems to quote Intra-day Adds, as further communicated to the Exchange, would be significant and costly.

Intra-day Adds make it extremely difficult for Market-Makers to comply with their obligation to quote in a substantial percentage of series in their appointed classes during a trading day on which Intra-day Adds are added in those classes. For example, if there are 1,000 series listed in an LMM's appointed class and the LMM is quoting in 900 of these series, the LMM is in compliance with the current minimum requirement to quote in 90% of series in its appointed class (assuming the LMM quotes in this number of series 99% of the trading day). However, if an Intra-day Add is added in the LMM's appointed class during the trading day, and the LMM's system does not automatically quote in this series, then the LMM would not comply, as it would be quoting in 900 of 1,001 series. This noncompliance would be compounded if more than one Intra-day Add is listed in a class during the same trading day. Further, if these Market-Makers turned their systems off to quote in Intra-day Adds on the trading day during which those series are added, then the Market-Makers could satisfy the standard to quote in a minimum percentage of series in their appointed classes but would then risk violating their obligation to quote for minimum percentage of the trading day as, theoretically, these Market-Makers might need to repeatedly turn their systems off to accommodate the Intra-day Adds.

As indicated above, the Exchange intends to implement changes to continuous quoting obligations that, among other things, will require PMMs, LMMs, DPMs and e-DPMs to continuously quote in at least the lesser of 99% or 100% minus one call-put pair of series in their appointed classes, which obligation includes Intra-day Adds.<sup>15</sup> Given this planned heightened standard, the risk that these Market-Makers may not satisfy their quoting obligations if they are required to quote Intra-day Adds increases.

As a result of this conflict, the pending heightened quoting obligations, and the considerable cost that would otherwise be involved to adjust their systems to quote Intra-day Adds on the trading day during which they are listed, several PMMs have informed the Exchange that they intend to withdraw from the PMM program, while other Market-Makers have requested that the Exchange suspend their pending applications to join the PMM program.

<sup>15</sup> See *supra* note 4.

The Exchange believes that it would be impracticable, particularly given that a number of Market-Makers use their systems to quote on multiple markets and not solely on the Exchange, for Market-Makers to turn off their entire systems to accommodate quoting in Intra-day Adds on the day during which those series are added on the Exchange. In addition, the Exchange believes this would interfere with the continuity of its market and reduce liquidity, which would ultimately harm investors and contradicts the purpose of the Market-Maker continuous quoting obligation.

This proposed rule change excludes Intra-day Adds from these continuous quoting obligations to address this conflict. Specifically, the Exchange is proposing to add text to Rules 8.7, 8.13, 8.15A, 8.85, and 8.93 to exclude Intra-day Add on the day during which such series are added for trading from Market-Makers' quoting obligations. As mentioned above, based on communications from Market-Makers, the Exchange is concerned that additional PMMs may withdraw from the PMM program, that other types of Market-Makers (particularly LMMs, DPMs and e-DPMs given their heightened quoting obligations) may withdraw from their class appointments, and that other market participants may be discouraged from requesting Market-Maker appointments or applying to the LMM, DPM and e-DPM programs if they are required to quote Intra-day Adds on the trading day during which those series are added under the new quoting obligations. The Exchange believes that withdrawals from, and reduced applications for, Market-Maker appointments would negatively impact liquidity and volume on the Exchange in those classes. The Exchange believes that providing Market-Makers with relief from their quoting obligations with respect to Intra-day Adds on the trading day during which they are added for trading will prevent these withdrawals and encourage market participants to apply for or continue their Market-Maker class appointments.

The Exchange does not believe this relief will result in any material decrease in liquidity. As mentioned above, it is the Exchange's understanding that several Market-Makers currently do not quote Intra-day Adds on the trading day during which they are added, so the Exchange believes this proposed relief would result in a minimal reduction, if any, in liquidity in these series. These Market-Makers' systems would add these series the next trading day, so if there is any slight reduction in liquidity in these few

series, it would only last for a short period of time (until the following trading day). Additionally, this potential small reduction in liquidity would be far outweighed by the reduction in liquidity that the Exchange believes would result from the withdrawals from and reductions in applications for Market-Maker appointments if the Exchange did not provide this relief.

The current quoting obligation in Intra-day Adds is a minor part of a Market-Maker's overall obligations. Intra-day Adds represent only approximately 0.0046% of the average number of series listed on the Exchange each trading day, so Market-Makers will still be obligated to provide continuous two-sided markets in a substantial number of series in their appointed classes.<sup>16</sup> Further, Market-Makers would still be obligated to quote the Intra-day Adds the following day, and, thus, their quoting relief is very short-lived and could, potentially, only last a few hours or until the opening of trading the following day. The Exchange believes that the burden of continuous electronic quoting in this extremely small number of series is counter to the Exchange's efforts to continuously increase liquidity in its listed option classes.

The Exchange believes the proposed rule change will continue to ensure that Market-Makers create a fair and orderly market in the option classes to which they are assigned, as it does not absolve Market-Makers from providing continuous electronic quotes in a significant percentage of series of each class for a substantial portion of the trading day. Market-Makers must engage in activities that constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, including (1) Competing with other Market-Makers to improve markets in all series of options classes comprising their appointments, (2) making markets that, absent changed market conditions, will be honored in accordance with firm quote rules, and (3) updating market quotations in response to changed market condition in their appointed options classes and to assure that any market quote it causes to be disseminated is accurate.<sup>17</sup>

The relief proposed in this filing is mitigated by a Market-Maker's other obligations. The proposed rule change would not excuse a Market-Maker that is present on the trading floor from its

obligation to provide a two-sided market complying with the bid/ask differential requirements in response to any request for quote by a floor broker, TPH or PAR Official.<sup>18</sup> The proposed rule change would also not excuse a Market-Maker that is present on the trading floor from its obligation to provide an open outcry two-sided market complying with the bid/ask differential requirements in response to a request for a quote by a TPH or PAR Official directed at that Market-Maker or when, in response to a general request for a quote by a TPH or PAR Official, a market is not then being vocalized by a reasonable number of Market-Makers.<sup>19</sup> Further, the proposed rule change would not excuse a Market-Maker from its obligation to submit a single quote or maintain continuous quotes in one or more series of a class to which the Maker-Maker is appointed when called upon by an Exchange official if, in the judgment of such official, it is necessary to do so in the interest of maintaining a fair and orderly market.<sup>20</sup> These obligations will continue to apply to all series.

The proposed rule change also clarifies in the Exchange Rules that while Market-Makers are not required to provide continuous electronic quotes in Intra-day Adds on the day during which such series are added for trading, a Market-Maker may still receive a participation entitlement in such series if it elects to quote in that series and otherwise satisfies the other entitlement requirements set forth in accordance with the Rules. Specifically, the Exchange is proposing to add language to Rules 8.13, 8.15B, and 8.87 clearly stating that Market-Makers may still receive participation entitlements pursuant to those Rules in all Intra-day Adds on the day during which such series are added for trading in which they are quoting provided that Market-Maker meets all other entitlement requirements as set forth in the applicable rule.

Market-Makers already receive participation entitlements in series they are not required to quote. For example, a DPM is currently required to provide continuous electronic quotes in at least 90% of the non-adjusted option series of each multiply listed option class allocated to it and in 100% of the non-adjusted option series of each singly listed option class allocated to it for

<sup>16</sup> For the month of October 2012, the average number of Intra-day Adds on a trading day was 18.5, and the average number of total series listed on the Exchange each trading day was approximately 400,000.

<sup>17</sup> See Rule 8.7(a) and (b).

<sup>18</sup> See Rule 8.7(d)(i)(C) (relating to a request for quote by a floor broker) and (ii)(C) (relating to a request for a quote by a Trading Permit Holder or PAR Official).

<sup>19</sup> See Rule 8.7(d)(iv).

<sup>20</sup> *Id.*

99% of the trading day.<sup>21</sup> If the DPM elects to quote in 100% of the non-adjusted series in a multiply listed option class allocated to it, it will receive a participation entitlement in all of those series when quoting at the best price, including the 10% of the series in which it is not required to quote in. Thus, under the proposed rule change, the market would continue to function as it does now. The Exchange believes this benefit is appropriate, as it incentivizes Market-Makers to quote in as many series as possible in their appointed classes, even those series in which the Rules do not require them to continuously quote.

The Exchange does not believe that the proposed rule change would adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity. Rather, the Exchange believes that its current market structure, with its high rate of participation by Market-Makers, permits the proposed rule change without fear of losing liquidity. The Exchange also believes that market-making activity and liquidity could materially decrease without the proposed rule change to exclude Intra-day Adds from Market-Maker continuous quoting obligations on the trading day during which they are added for trading. The Exchange believes that this proposed relief will encourage Market-Makers to continue appointments and other TPHs to request Market-Maker appointments, and, as a result, expand liquidity in options classes listed on the Exchange to the benefit of the Exchange and its TPHs and public customers. The Exchange believes that its Market-Makers would be disadvantaged without this proposed relief, and other TPHs and public customers would also be disadvantaged if Market-Makers withdrew from appointments in options classes, resulting in reduced liquidity and volume in these classes. Additionally, the Exchange believes that the proposed rule change to clarify that Market-Makers may receive participation entitlements in Intraday Adds on the day during which such series are added for trading if it satisfies the other entitlement requirements as set forth in Exchange Rules, even if the Rules do not require the Market-Makers to continuously quote in those series, will incent Market-Makers to quote in series in which they are not required to quote, which may increase liquidity in their appointed classes.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>22</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>23</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 facilitation 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>24</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to exclude Intra-day Adds during the day which such series are added for trading from Market-Makers' quoting obligations promotes just and equitable principles of trade because it promotes liquidity and continuity in the marketplace and would prevent interruptions in quoting or reduced liquidity that may otherwise result. The Exchange also believes that the proposed rule change supports the quality of the Exchange's markets because it does not significantly change the current quoting obligations of Market-Makers. Market-Makers must still provide continuous electronic quotes for a significant part of the trading day in a substantial number of series of each appointed class. Even if a Market-Maker does not quote Intra-day Adds on the trading day during which they are added, this would be offset by the Market-Maker's continued obligation to quote in these series when requested by a floor broker, TPH, or PAR Official. The proposed relief is further offset by a Market-Maker's obligation to quote in these series beginning the next trading day. Accordingly, the proposed rule change supports the quality of the Exchange's trading markets by helping to ensure that Market-Makers will continue to be

obligated to quote in Intra-day Adds if, and when, the need arises and on an ongoing basis following the trading day during which the series are added. The Exchange believes this proposed change is reasonable and is offset by Market-Makers' continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

The Exchange believes this proposed rule change, on balance, is a minor change and should not impact the quality of the Exchange's trading markets. Among other things, Intra-day Adds represent an insignificant percentage of series listed on the Exchange each day. The Exchange further believes that the potential small reduction in liquidity in Intra-day Adds that may result from the proposed relief would be far outweighed by the significant reduction in liquidity in appointed classes that the Exchange believes could occur from withdrawals from and reductions in applications for Market-Maker appointments without the proposed relief. The proposed rule change also removes impediments to and allows for a free and open market, while protecting investors, by promoting additional transparency regarding Market-Makers' obligations and benefits in the Exchange Rules. In addition, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination among Market-Makers, as the proposed rule change provides the proposed relief for all Market-Makers.

The proposed rule change to clarify that Market-Makers may receive participation entitlements in Intra-day Adds in their appointed classes in which they are quoting, even though they are not required to quote, if the other requirements set forth in the Rules are satisfied, further supports the quality of the Exchange's trading markets because it encourages Market-Makers to quote in as many series as possible, which ultimately benefits all investors. This benefit is offset by the Market-Makers' continued quoting obligations and the fact that their quotes in these "non-required" series must still satisfy all of the Market-Makers' other obligations under the Rules. The Exchange also believes that this proposed change is consistent with its current practice, pursuant to which Market-Makers receive participation entitlements in additional series in which they elect to quote above the minimum percentage of series in which they are required to continuously quote under the Rules.

For the foregoing reasons, the Exchange believes that the proposed

<sup>21</sup> As discussed above, this obligation will change upon implementation of a recent rule change. See *supra* note 4.

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> *Id.*

rule change is appropriate and consistent with the Act.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to exclude Intra-day Adds during the day which such series are added for trading from Market-Makers' quoting obligations will cause any unnecessary burden on intramarket competition because it provides the same relief to a group of similarly situated market participants—Market-Makers. The Exchange does not believe the proposed change will cause any unnecessary burden on intermarket competition because Intra-day Adds are a very small portion of series on the Exchange. Exchange further believes that the potential small reduction in liquidity in Intra-day Adds that may result from the proposed relief would be far outweighed by the significant reduction in liquidity in appointed classes that the Exchange believes could occur from withdrawals from and reductions in applications for Market-Maker appointments without the proposed relief. In addition, the Exchange believes that the proposed rule change will in fact relieve any burden on, or otherwise promote, competition. The Exchange believes that excluding Intra-day Adds on the day during which they are added for trading from Market-Maker obligations will promote trading activity on the Exchange to the benefit of the Exchange, its TPHs, and market participants.

The Exchange does not believe the proposed rule change to clarify that Market-Makers may receive participation entitlements in Intra-day Adds in their appointed classes in which they are quoting, even though they are not required to quote, if the other requirements set forth in the Rules are satisfied, will cause any unnecessary burden on intramarket competition because it too provides the same relief to a group of similarly situated market participants—Market-Makers. The Exchange does not believe the proposed change will cause any unnecessary burden on intermarket competition because Market-Makers are currently entitled to receive participation entitlements on series they are not obligated to quote in under the Rules. In addition, the Exchange believes that the proposed rule change will in fact relieve any burden on, or otherwise promote, competition. The Exchange believes

allowing Market-Makers to receive a participation entitlements in Intra-day Adds will promote trading activity on the Exchange because it will incentivize Market-Makers to quote in such series though not obligated to do so to the benefit of the Exchange, its TPHs, and market participants.

### *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**

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 is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-019 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2013-019. 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-2013-019, and should be submitted on or before March 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Kevin M. O'Neill**,  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68936; File No. SR-NYSE-2013-07]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending NYSE Rules 451 and 465, and the Related Provisions of Section 402.10 of the NYSE Listed Company Manual, Which Provide a Schedule for the Reimbursement of Expenses by Issuers to NYSE Member Organizations for the Processing of Proxy Materials and Other Issuer Communications Provided to Investors Holding Securities in Street Name and to Establish a Five-Year Fee for the Development of an Enhanced Brokers Internet Platform**

February 15, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

<sup>25</sup> 17 CFR 200.30-3(a)(12).

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