

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act.<sup>32</sup>

(6) It is anticipated that the Fund, in accordance with its principal investment strategy, will invest approximately 50% to 75% of its net assets in Senior Loans that are eligible for inclusion in and meet the liquidity thresholds of the Primary or the Secondary Indices. Each of the Fund's Senior Loan investments is expected to have no less than \$250 million USD par outstanding. While the Fund may hold a Senior Loan that has defaulted subsequent to its purchase by the Fund, the Adviser does not intend to purchase Senior Loans that are in default.

(7) Under normal market conditions, the Fund would generally satisfy the generic fixed income listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase.

(8) The Fund will not invest in non-U.S.-registered equity issues (except for underlying ETFs that may hold non-U.S.

issues). The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities, junior subordinated loans, and unsecured loans deemed illiquid by the Adviser. The Fund will not invest in options contracts, futures contracts, or swap agreements.

(9) The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage.

(10) A minimum of 100,000 Shares will be outstanding at the commencement of trading. This approval order is based on all of the Exchange's representations, including those set forth in the Notice.

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>33</sup> and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR-NASDAQ-2013-036), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

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

[FR Doc. 2013-10345 Filed 5-1-13; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69467; File No. SR-ISE-2013-15]

#### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of a Proposed Rule Change To Amend the Obvious and Catastrophic Errors Rule

April 26, 2013.

#### I. Introduction

On February 26, 2013, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend Rule 720, Obvious and Catastrophic Errors. The proposed rule change was published for comment in the **Federal Register** on March 14, 2013.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 720 relating to obvious error and catastrophic error rules by: (1) Providing that, in the case of both obvious and catastrophic errors, the Exchange will nullify trades for transactions involving Priority Customers<sup>4</sup> and adjust trades where none of the parties to the trade are Priority Customers; and (2) harmonizing the procedure for making obvious and catastrophic error determinations.

#### *Erroneous Transactions Involving Priority Customers*

Under current Rule 720(b)(2), the Exchange nullifies obvious error transactions unless all parties to the trade are ISE market makers, in which case the Exchange adjusts the price of the transaction. With respect to catastrophic errors, the Exchange currently adjusts all transactions even if they involve non-market makers.<sup>5</sup>

The Exchange proposes to amend its obvious and catastrophic error procedures to allow the Exchange to nullify trades that qualify as either an obvious error or a catastrophic error if such trades involved a Priority Customer and adjust trades where none of the parties to the trade are Priority Customers (*i.e.*, market makers, broker-dealers and professional customers). Specifically, the Exchange proposes to amend Rule 720(b)(2)(ii) and adopt new Rule 720(c)(2)(B),<sup>6</sup> which states that where at least one party to the obvious or catastrophic error is a Priority Customer, the trade will be nullified by

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

<sup>3</sup> Securities Exchange Act Release No. 69085 (March 8, 2013), 78 FR 16338 ("Notice").

<sup>4</sup> ISE Rule 100(a)(37A) defines "Priority Customer" as a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

<sup>5</sup> See ISE Rule 720(d)(3).

<sup>6</sup> This proposed rule change also realigns certain parts of Rule 720. The rule on Catastrophic Error Procedure rule was previously found in Rule 720(d) and with the proposed realignment, this rule now appears as Rule 720(c).

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

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

<sup>32</sup> See 17 CFR 240.10A-3.

Market Control<sup>7</sup> unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by Market Control of its determination. The Exchange believes that this proposal provides a fair way to address the issue of a trade executing through a customer's limit order price while balancing the competing interests of certainty that trades stand with the policy concerns about dealing with true errors.

#### *Determination of Erroneous Transactions*

Under Rule 720(b)(2), Market Control determines whether an obvious error has occurred and applies the rule to adjust or nullify trades with the ability for those parties affected to request that a panel of members review decisions made by Market Control. With respect to catastrophic errors, Rule 720(d)(2) currently requires that a panel of members make the initial determination of whether a catastrophic error occurred rather than Market Control.

The Exchange proposes to amend the catastrophic error procedure to provide that Market Control shall make the initial determination of whether or not a catastrophic error has occurred. The Exchange's proposed procedure would allow parties affected by an action taken by Market Control the ability to request that such actions be reviewed by a member panel, rather than requiring a member panel to make the initial determination in all cases. The Exchange's proposed rule also sets forth the steps that Market Control shall take if a determination has been made that a catastrophic error has occurred.<sup>8</sup>

The Exchange also proposes to rearrange parts of Rule 720. Specifically, the Exchange proposes to delete Rule 720(c) (Obvious Error Panel) and move the substance of that rule to new Rule 720(d), which is also renamed Review Panel, and which will now apply to both obvious and catastrophic errors. Proposed Rule 720(d) will provide the composition of the Review Panel,<sup>9</sup> the scope of the Review Panel's review,<sup>10</sup> the procedure for requesting review,<sup>11</sup> and the decisions of the Review Panel.<sup>12</sup>

<sup>7</sup> Market Control consists of designated personnel in the Exchange's market control center. See ISE Rule 720(a)(3)(ii).

<sup>8</sup> See Proposed Rule 720(c)(2).

<sup>9</sup> See Proposed Rule 720(d)(1).

<sup>10</sup> See Proposed Rule 720(d)(2).

<sup>11</sup> See Proposed Rule 720(d)(3).

<sup>12</sup> See Proposed Rule 720(d)(4). The Exchange is also proposing conforming amendments to Supplementary Material .01, .02, .03 and .04 to Rule 720 to reflect the proposed rule changes.

### III. Discussion

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> in that the proposed change is designed to promote just and equitable principles of trade, will serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>15</sup>

In the filing, the Exchange notes its belief that the proposed rule change relating to nullifying trades involving Priority Customers and adjusting trades where none of the parties are Priority Customers will help market participants better manage their risk associated with potential erroneous trades. The Exchange notes that the proposed rule change is not unfairly discriminatory, even though it offers some market participants a choice as to whether a trade is nullified or adjusted, while other market participants will continue to have all of their obvious and catastrophic errors adjusted. Specifically, the Exchange notes that the existing rules differentiate among market participants.<sup>16</sup> The Exchange notes further that options rules often treat Priority Customers in a special way,<sup>17</sup> recognizing that Priority Customers are not necessarily immersed in the day-to-day trading of the markets, less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. The Exchange goes on to note that, while the proposed rule change may introduce uncertainty regarding whether a trade will be adjusted or nullified, it eliminates price uncertainty, as customer orders can be adjusted to a significantly different price than their

<sup>13</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>16</sup> The Exchange notes, for example, that the notification period to begin the obvious error process is different for Exchange market makers and non-market makers and whether a trade is adjusted or busted also differs.

<sup>17</sup> For example, many options exchanges priority rules treat Priority Customer orders differently and some options exchanges only accept certain types of orders from Priority Customers. Most options exchanges also charge different fees for Priority Customer orders.

limit order price under the rule prior to this proposed rule change. Ultimately, the Exchange believes differentiating among market participants by permitting Priority Customers to have a choice as to whether to nullify a trade involving an obvious or a catastrophic error is not unfairly discriminatory, because it is reasonable and fair to provide Priority Customers with additional options to protect themselves against the consequences of obvious and catastrophic errors.

The Commission notes that in considering the proposed rule change, the Exchange has weighed the benefits of certainty to non-broker-dealer customers that their limit price will not be violated against the costs of increased uncertainty to other market participants such as market makers and broker-dealers that their trades may be nullified instead of adjusted depending on whether the other party to the transaction is or is not a Priority Customer. The proposed rule change takes an approach similar to the one taken in the Exchange's existing obvious error rule, whereby transactions in which an obvious error occurred with at least one party that is not an Exchange market maker are nullified unless both parties agree to adjust the price of the transaction within 30 minutes of being notified of the obvious error.

Further, the Commission believes that the proposed rule change relating to Market Control making the determination of whether a catastrophic error has occurred will promote just and equitable principles of trade by adding certainty and more consistency to the current rule. The Exchange noted that, in its experience, the procedure of requiring a member panel to make the initial determination of whether or not a catastrophic error has occurred in all cases is inefficient and unnecessary. The Exchange stated that its obvious and catastrophic error rule and the procedures that carry out the rule have consistently been based on specific and objective criteria. The Exchange noted that this proposal furthers that principle by adopting objective guidelines for the determination of which trades may be nullified or adjusted, and for the determination of whether or not a trade is deemed to be a catastrophic error. For the reasons noted above, the Exchange believes that the proposed rule change is consistent with the Act.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the

<sup>18</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-ISE-2013-15) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

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

[FR Doc. 2013-10346 Filed 5-1-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69468; File No. SR-CBOE-2013-046]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete Rule 6.74(b) That Sets Forth Expired SizeQuote Mechanism Pilot Program

April 26, 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 April 25, 2013, the 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 and II 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 delete Rule 6.74(f) that sets forth the SizeQuote Mechanism pilot program because this pilot program expired on February 15, 2008. 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The purpose of this filing is to delete Rule 6.74(f) that sets forth the open outcry SizeQuote Mechanism program, which was approved on a pilot basis in February 2005 and was expanded to include solicited orders in January 2006. The SizeQuote Mechanism pilot program was extended twice and expired on February 15, 2008.<sup>5</sup>

In connection with the March 18, 2013 launch of mini-options, the Exchange amended, among other rules, Rule 6.74(f) to establish a minimum eligible order size for mini-options in an amount proportional to the minimum eligible order size that is required for standard options (*i.e.*, not less than 250 standard option contracts delivering 100 shares and not less than 2,500 for mini-option contracts delivering 10 shares).<sup>6</sup> In that filing, the Exchange deleted obsolete rule text from Rule 6.74(f)(i)

<sup>5</sup> See Securities Exchange Act Release Nos. 51205 (February 15, 2005), 70 FR 8647 (February 22, 2005) (approving SR-CBOE-2004-72 on a pilot basis through February 15, 2006); 53135 (January 17, 2006), 71 FR 3908 (January 24, 2006) (approving SR-CBOE-2005-83, which modified the pilot program); 53252 (February 8, 2006), 71 FR 8012 (February 15, 2006) (immediately effective proposal, SR-CBOE-2006-05, extending the pilot program from February 15, 2006 to February 15, 2007); and 55174 (January 25, 2007), 72 FR January 31, 2007 (immediately effective proposal, SR-CBOE-2007-07, extending the pilot program from February 15, 2007 to February 15, 2008).

The expired pilot program provided a process by which a Floor Broker (using his/her exercise of due diligence to execute orders at the best price(s)) could execute and facilitate large-sized orders in open outcry. The Exchange issued a Regulatory Circular announcing the expiration of the SizeQuote Mechanism Pilot, which was no longer operative after February 15, 2008. See CBOE Regulatory Circular *RG08-028* (Expiration of SizeQuote Mechanism Pilot).

<sup>6</sup> See Securities Exchange Act Release No. 69235 (March 25, 2013), 78 FR 19552 (April 1, 2013) (notice of filing and immediate effectiveness of SR-CBOE-2013-036).

that referenced that the SizeQuote Mechanism pilot program had expired on February 15, 2008. The Exchange believes that the entirety of 6.74(f) should be deleted since the SizeQuote Mechanism pilot program has expired, the rule text language is obsolete and to eliminate confusion as to availability of the SizeQuote Mechanism pilot program that may arise if the language remains in Rule 6.74(f).

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.<sup>7</sup> In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that investors and market participants would benefit from Rule 6.74(d) being deleted because it sets forth the SizeQuote Mechanism pilot program that expired on February 15, 2008 and therefore contains obsolete and outdated rule text. If the current rule text language remains, confusion could arise as to whether the SizeQuote Mechanism pilot program is currently available. Because CBOE did not to renew and/or revise or seek to make the SizeQuote Mechanism pilot program permanent, CBOE believes that it is appropriate to delete the obsolete rule text that references the SizeQuote Mechanism pilot program which expired on February 15, 2008.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed to delete obsolete rule text language that sets forth the expired SizeQuote Mechanism pilot program in Rule 6.74(d). Since all market participants cannot currently utilize the expired SizeQuote Mechanism pilot

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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