may have because of its affiliation with the Exchange to its advantage.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Permanent approval of the current pilot program does not raise any issues of intra-market competition because it involves inbound routing from an affiliated exchange. Nor does it result in a burden on competition among exchanges, because there are many competing options exchanges that provide routing services, including through an affiliate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (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*. Please include File Number SR–Phlx–2013–42 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–Phlx–2013–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also 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–Phlx–2013–42 and should be submitted on or before May 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10873 Filed 5–7–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–69504; File No. SR–CBOE–2013–027]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Trading Ahead of Customer Orders and Best Execution and Interpositioning Requirements

May 2, 2013.

I. Introduction

On March 5, 2013, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt CBOE Rules 53.2 (Prohibition Against Trading Ahead of Customer Orders) and 53.8 (Best Execution and Interpositioning). The proposed rule change was published for comment in the **Federal Register** on March 21, 2013.[3] On April 12, 2013, CBOE filed Amendment No. 1 to the proposed rule change.[4] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of Proposed Rule Change

The Exchange proposes to amend Rule 53.2 of the CBSX Rules, which governs the treatment of customer orders and prohibits a CBSX Trading Permit Holder from proprietarily trading ahead of a customer order, and to adopt Rule 53.8 in the CBSX Rules to govern Trading Permit Holders' best execution and interpositioning requirements. The Exchange represented that the proposed rule change is consistent with Financial Industry Regulatory Authority (''FINRA'') Rules 5320 (Prohibition Against Trading Ahead of Customer Orders)[5] and 5310 (Best Execution and Interpositioning),[6] respectively, in the Consolidated FINRA Rulebook.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69146 (March 15, 2013); 78 FR 17454 (''Notice'').

[4] *See* Amendment No. 1 dated April 12, 2013. Amendment No. 1 corrected minor errors in the rule text of proposed Rules 53.2 and 53.8. Because Amendment No. 1 is technical in nature, it is not subject to notice and comment.

[5] *See* Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR–FINRA–2009–090) (order approving FINRA Rule 5320, ''Prohibition Against Trading Ahead of Customer Orders''). Other exchanges have adopted substantially similar rules prohibiting trading ahead of customer orders. *See, e.g.,* Securities Exchange Act Release No. 64418 (May 6, 2011), 76 FR 27735 (May 12, 2011) (SR–CHX–2011–008) (notice of filing and immediate effectiveness of proposed rule change of Chicago Stock Exchange, Inc. to adopt customer order protection language consistent with FINRA Rule 5320); Securities Exchange Act Release No. 65165 (August 18, 2011), 76 FR 53009 (August 24, 2011) (SR–NYSEAmex–2011–059) (notice of filing and immediate effectiveness of proposed rule change of NYSE Amex LLC (now known as NYSE MKT LLC) to adopt customer order protection language that is substantially the same as FINRA Rule 5320); and Securities Exchange Act Release No. 65166 (August 18, 2011), 76 FR 53012 (August 24, 2011) (SR–NYSEArca–2011–057) (notice of filing and immediate effectiveness of proposed rule change of NYSE Arca, Inc. to adopt customer order protection language that is substantially the same as FINRA Rule 5320).

[6] *See* Securities Exchange Act Release No. 65895 (December 5, 2011), 76 FR 77042 (December 9,

Rule 53.2—Prohibition Against Trading Ahead of Customer Orders

The proposed rule change would replace in its entirety the text of current Rule 53.2 and add a number of exceptions. Proposed Rule 53.2 includes customer order protection language that states if a Trading Permit Holder holds an order in an equity security from its own customer or a customer of another broker-dealer, the Trading Permit Holder is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order. The proposed rule change states that this prohibition does not apply if a Trading Permit Holder, who has traded proprietarily ahead of a customer order, immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account. In other words, in the event that a Trading Permit Holder trades ahead of an unexecuted customer order at a price that is equal to or better than the unexecuted customer order on the CBSX System, the Trading Permit Holder is required to execute the customer order at the price received by the Trading Permit Holder or better; otherwise the Trading Permit Holder will be in violation of improperly trading ahead of the customer order.[7] The proposed rule change also would establish the minimum amount of price improvement necessary for a Trading Permit Holder to execute an order on a proprietary basis when holding an unexecuted limit order.[8]

The Exchange proposes to establish that a Trading Permit Holder must have written procedures in place governing the execution and priority of all pending orders that is consistent with proposed Rule 53.2 and the best execution requirements of proposed Rule 53.8 and must ensure that these procedures are applied consistently.

In furtherance of ensuring customer order protection, the proposed rule change clarifies Trading Permit Holder obligations in handling marketable customer orders. In meeting these obligations, a Trading Permit Holder must make every effort to execute a marketable customer order that it receives fully and promptly. A Trading Permit Holder that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross the order with any other order received by the Trading Permit Holder on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the Trading Permit Holder and that is consistent with the terms of the orders. In the event that a Trading Permit Holder is holding multiple orders on both sides of the market that have not been executed, the Trading Permit Holder must make every effort to cross or otherwise execute these orders in a manner that is reasonable and consistent with the objectives of the proposed rule change and with the terms of the orders. A Trading Permit Holder can satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.[9]

Large Orders and Institutional Accounts Exception [10]

One exception to the prohibition on trading ahead of customer orders permits Trading Permit Holders to negotiate terms and conditions on the acceptance of certain large-sized orders (orders of 10,000 shares or more and greater than or equal to $100,000 in value) or orders from institutional accounts.[11] These terms and conditions will permit Trading Permit Holders to continue to trade alongside or ahead of these customer orders if the customer agrees. A Trading Permit Holder will be permitted to trade a security on the same side of the market for its own account at a price that will satisfy a customer order provided that the Trading Permit Holder provides clear and comprehensive written disclosure to each customer at account opening and annually thereafter that: (1) Discloses that the Trading Permit Holder may trade proprietarily at prices that would satisfy the customer order, and (2) provides the customer with a meaningful opportunity to opt in to the Rule 53.2 protections with respect to all or any portion of its order(s).

If a customer does not opt in to the Rule 53.2 protections with respect to all or any portion of its order(s), the Trading Permit Holder may reasonably conclude that the customer has consented to the Trading Permit Holder trading a security on the same side of the market for its own account at a price that will satisfy the customer's order.[12]

In lieu of providing written disclosure to customers at account opening and annually thereafter, proposed Rule 53.2 will permit Trading Permit Holders to provide clear and comprehensive oral disclosure to, and obtain consent from, a customer on an order-by-order basis, provided that the Trading Permit Holder documents who provided that consent and that the consent evidences the customer's understanding of the terms and conditions of the order. In addition, where a customer has opted in to the Rule 53.2 protections, a Trading Permit Holder may still obtain consent on an order-by-order basis to trade ahead of or along with an order from that customer, provided that the Trading Permit Holder documents who provided the consent and that the consent evidences the customer's understanding of the terms and conditions of the order.[13]

No-Knowledge Exception [14]

The Exchange also proposes to add a ''no-knowledge'' exception to CBSX's

2011) (SR–FINRA–2011–052) (order approving FINRA Rule 5310, ''Best Execution and Interpositioning''). Other exchanges have similar best execution and interpositioning rules. *See, e.g.,* NASDAQ Stock Market LLC Rule 2320 (Best Execution and Interpositioning) and IM–2320; and NASDAQ OMX PHLX LLC Rule 764 (Best Execution and Interpositioning).

[7] For example, if a Trading Permit Holder buys 100 shares of a security at $10 per share while holding customer limit orders in the same security to buy at $10 per share equaling, in aggregate, 1000 shares, the Trading Permit Holder is required to fill 100 shares of the customer limit orders at $10 per share or better.

[8] *See* proposed Rule 53.2, Interpretation and Policy .05. For example, for customer limit orders priced greater than or equal to $1.00, the minimum amount of price improvement required would be $0.01.

[9] *See* proposed Rule 53.2, Interpretation and Policy .06.

[10] *See* proposed Rule 53.2, Interpretation and Policy .01.

[11] Proposed Rule 53.2, Interpretation and Policy .01 defines ''institutional account'' as an account of: (a) A bank, savings and loan association, insurance company, or registered investment company; (b) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (c) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

[12] As is always the case, customers retain the right to withdraw consent at any time. Therefore, a Trading Permit Holder's reasonable conclusion that a customer has consented to the Trading Permit Holder trading along with the customer's order is subject to further instruction and modification from the customer.

[13] While a Trading Permit Holder organization relying on this or any exception must be able to proffer evidence of its eligibility for and compliance with the exception, the Exchange believes that when obtaining consent on an order-by-order basis, Trading Permit Holders must, at a minimum, document not only the terms and conditions of the order (*e.g.,* the relative price and size of the allocated order/percentage split with the customer), but also the identity of the person at the customer who approved the trade-along request. For example, the identity of the person must be noted in a manner that will enable subsequent contact with that person if a question as to the consent arises (*i.e.,* first names only, initials, and nicknames will not suffice). A ''trade along'' request would be when a Trading Permit Holder asks to trade for his/her proprietary account while simultaneously holding and working a customer order in that same stock.

[14] *See* proposed Rule 53.2, Interpretation and Policy .02.

customer order protection rule. This proposed exception will allow a proprietary trading unit of a Trading Permit Holder organization to continue trading in a proprietary capacity and at prices that will satisfy customer orders that are being held by another, separate trading unit at the Trading Permit Holder organization. The ''no-knowledge'' exception will be applicable with respect to NMS stocks, as defined in Rule 600 of SEC Regulation NMS. In order to avail itself of the ''no-knowledge'' exception, a Trading Permit Holder organization will first be required to implement and utilize an effective system of internal controls (such as appropriate information barriers) that operate to prevent the proprietary trading unit from obtaining knowledge of the customer orders that are held at a separate trading unit. For example, in the case of a CBSX Broker [15] that conducts both a proprietary and agency brokerage business and has implemented and utilized an effective system of internal controls, the ''walled off'' proprietary desk(s) of the CBSX Broker will be permitted to trade at prices that will satisfy the customer orders held by the agency brokerage desk without any requirement that these proprietary executions trigger an obligation to fill pending customer orders at the same price. The ''no-knowledge'' exception will also apply to a Trading Permit Holder organization's market-making unit.

A Trading Permit Holder organization that structures its order handling practices in NMS stocks to permit its proprietary and/or market-making desk to trade at prices that will satisfy customer orders held by a separate trading unit must disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which customer orders are handled by the Trading Permit Holder and the circumstances under which the Trading Permit Holder may trade proprietarily at its market-making desk at prices that will satisfy the customer order. This proposed disclosure may be combined with the disclosure and negative consent statement permitted in connection with the proposed large order and institutional account exceptions.

If a Trading Permit Holder intends to rely on the no-knowledge exception by implementing information barriers, those information barriers must (1) provide for the organizational separation of a Trading Permit Holder's trading unit that holds customer orders and a proprietary trading unit; (2) ensure that one trading unit does not exert influence over the other trading unit; (3) ensure that information relating to each trading unit's stock positions, trading activities, and clearing and margin arrangements is not improperly shared (except with persons in senior management who are involved in exercising general managerial oversight of one or both entities); (4) require each trading unit to maintain separate books and records (and separate financial accounting); (5) require each trading unit to separately meet all required capital requirements; (6) ensure the confidentiality of each trading unit's book as provided by Exchange rules; and (7) ensure that any other material, non-public information (*e.g.,* information related to any business transactions between a trading unit and an issuer or any research reports or recommendations issued by the trading unit) is not made improperly available to the other trading unit in any manner that will allow that trading unit to take undue advantage of that information while trading on CBSX. A Trading Permit Holder will be required to submit the proposed information barriers in writing to the Exchange upon request.

The proposed rule change requires Trading Permit Holders that intend to rely on the no-knowledge exception by implementing information barriers to have ''appropriate'' information barriers. The Exchange stated its belief that including these specific information barrier requirements will clarify for Trading Permit Holders the types of information barriers that will be deemed appropriate information barriers and thus better allow Trading Permit Holders to rely on this exception. The Exchange noted that its surveillance procedures will continue to include a review of all orders for compliance with the prohibition on trading ahead of customer orders, and part of that review will include review of Trading Permit Holders' information barriers to determine whether they are sufficient for Trading Permit Holders to avail themselves of the no-knowledge exception for each applicable order. These requirements regarding information barriers are substantially similar to those set forth in CBOE Rule 54.8, which includes special provisions for trading commodity-based trust shares on CBSX, except that the proposed rule change provides that information barriers must be submitted upon request while CBOE Rule 54.8 provides that information barriers must be submitted and approved in advance. The Exchange stated its belief that it is appropriate and efficient to request from a Trading Permit Holder its information barriers as part of its surveillance procedures with respect to the customer order protection rule.

ISO Exception[16]

The proposed rule change also clarifies that a Trading Permit Holder will be exempt from the obligation to execute a customer order in a manner consistent with CBSX's customer order protection rule with regard to trading for its own account that is the result of an intermarket sweep order routed in compliance with Regulation NMS (''ISO'') [17] where the customer order is received after the Trading Permit Holder routed the ISO. Where a Trading Permit Holder routes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO, the Trading Permit Holder also will be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer's order.

Odd Lot and Bona Fide Error Transaction Exception [18]

The Exchange proposes applying an exception for a firm's proprietary trade that (1) offsets a customer odd lot order (*i.e.,* an order less than one round lot, which is typically 100 shares); or (2) corrects a bona fide error. With respect to bona fide errors, Trading Permit Holder will be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception. For purposes of this proposed Rule, the definition of a ''bona fide error'' is as defined in Regulation NMS's exemption for error correction transactions.[19]

Trading Outside Normal Market Hours [20]

The proposed rule change will expand CBSX's customer order protection requirements to apply at all times that a customer order is executable by the Trading Permit Holder, even outside the period of normal market hours. Thus, customers

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[15] A ''CBSX Broker'' is a Trading Permit Holder who enters orders as an agent. *See* Rule 50.3(5).

[16] *See* proposed Rule 53.2, Interpretation and Policy .03.

[17] 17 CFR 242.600(b)(30)(ii).

[18] *See* proposed Rule 53.2, Interpretation and Policy .04.

[19] *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007) (Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934).

[20] *See* proposed Rule 53.2, Interpretation and Policy .07.

will have the benefit of the customer order protection rules at all times where such order is executable by the Trading Permit Holder, subject to any applicable exceptions. This exception will apply to those Trading Permit Holders that accept customer orders after normal market hours.

Rule 53.8—Best Execution and Interpositioning

The Exchange also proposes to adopt a new rule to govern Trading Permit Holders' best execution and interpositioning requirements. Proposed Rule 53.8(a)(1) will require a Trading Permit Holder or person associated with a Trading Permit Holder, in any transaction for or with a customer or a customer of another broker-dealer, to use ''reasonable diligence'' to ascertain the best market for a security and to buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. The proposed rule identifies five factors that are among those to be considered in determining whether the Trading Permit Holder or person associated with a Trading Permit Holder has used reasonable diligence:

(1) The character of the market for the security;

(2) the size and type of transaction;

(3) the number of markets checked;

(4) the accessibility of the quotation; and

(5) the terms and conditions of the order as communicated to the Trading Permit Holder or person associated with the Trading Permit Holder.

Proposed Rule 53.8(a)(2) relates to interpositioning and prohibits a Trading Permit Holder or person associated with a Trading Permit Holder, in any transaction for or with a customer or a customer of another broker-dealer, from interjecting a third party between the Trading Permit Holder or person associated with a Trading Permit Holder and the best market for the subject security in a manner inconsistent with the best execution requirements in subparagraph (a)(1) of proposed Rule 53.8.

Proposed Rule 53.8 also includes provisions related to the use of a broker's broker, the staffing of order rooms, and the application of the best execution requirements to other parties. Proposed paragraph (b) provides that when a Trading Permit Holder cannot execute directly with a market but must employ a broker's broker or some other means in order to ensure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the Trading Permit Holder. Proposed paragraph (c) provides that failure to maintain or adequately staff a department assigned to execute customers' orders cannot be considered justification for executing away from the best available market; nor can channeling orders through a third party as reciprocation for service or business operate to relieve a Trading Permit Holder of its obligations under proposed Rule 53.8. Proposed paragraph (d) provides that a Trading Permit Holder through which an order is channeled and that knowingly is a party to an arrangement whereby the initiating Trading Permit Holder has not fulfilled its obligations under Rule 53.8 will also be deemed to have violated Rule 53.8. Proposed paragraph (e) provides that the obligations in paragraphs (a) through (d) apply when the Trading Permit Holder acts as agent for the account of its customer as well as when transactions are executed as principal.

Proposed Rule 53.8 includes several Interpretations and Policies to provide additional guidance and clarity regarding Trading Permit Holders' obligations with respect to the best execution and interpositioning requirements. Proposed Interpretation and Policy .01 reinforces a Trading Permit Holder's duty to make every effort to execute a marketable customer order that it receives fully and promptly. Proposed Interpretation and Policy .02 defines the term ''market'' for the purposes of proposed Rule 53.8.[21]

Proposed Interpretation and Policy .03 addresses broker-dealers that are executing a customer's order against the Trading Permit Holder's quote. It provides that a Trading Permit Holder's duty to provide best execution in any transaction ''for or with a customer of another broker-dealer'' does not apply in instances when another broker-dealer is simply executing a customer order against the Trading Permit Holders' quote. The duty to provide best execution to customer orders received from other broker-dealers arises only when an order is routed from the broker-dealer to the Trading Permit Holder for the purpose of order handling and execution. This clarification is intended to draw a distinction between those situations in which the Trading Permit Holder is acting solely as the buyer or seller in connection with orders presented by a broker-dealer against the Trading Permit Holder's quote, as opposed to those circumstances in which the Trading Permit Holder is accepting order flow from another broker-dealer for the purpose of facilitating the handling and execution of such orders.

Proposed Interpretation and Policy .04 provides that when a Trading Permit Holder cannot execute directly with a market but must employ a broker's broker or some other means in order to ensure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the Trading Permit Holder. Examples of acceptable circumstances are where a customer's order is crossed with another firm that has a corresponding order on the other side, or where the identity of the firm, if known, would likely cause undue price movements adversely affecting the cost or proceeds to the customer.

Proposed Interpretation and Policy .05 addresses the fact that markets for securities differ dramatically and provides additional guidance regarding a Trading Permit Holder's best execution obligations when handling an order involving any security for which there is limited pricing information or other quotations available. The Interpretation and Policy emphasizes that Trading Permit Holders must be especially diligent with respect to best execution obligations where there is limited quotation or other pricing information available regarding the security that is the subject of the order and requires Trading Permit Holders to have written policies and procedures in place to address the steps the Trading Permit Holder will take to determine the best interdealer market for such a security in the absence of multiple quotations or pricing information and to document how they have complied with those policies and procedures. The Interpretation and Policy specifically notes that, when handling orders for these securities, Trading Permit Holders should generally seek out other sources of pricing information or potential liquidity, which may include obtaining quotations from other sources (*e.g.,* other firms that the Trading Permit Holder previously has traded within the security). For example, in many instances, particularly in the context of equity securities with limited quotation information available, contacting other broker-dealers may be necessary to

[21] For purposes of proposed Rule 53.8 and the accompanying Interpretations and Policies, the term ''market'' or ''markets'' is to be construed broadly, and it encompasses a variety of different venues, including, but not limited to, market centers that are trading a particular security. This expansive interpretation is meant to both inform broker-dealers as to the breadth of the scope of venues that must be considered in the furtherance of their best execution obligations and to promote fair competition among broker-dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge, by not mandating that certain trading venues have less relevance than others in the course of determining a firm's best execution obligations.

comply with a Trading Permit Holder's best execution obligations.

When placing an order with a Trading Permit Holder, customers may specifically instruct the Trading Permit Holder to route the order to a particular market for execution.[22] Proposed Interpretation and Policy .06 addresses situations where the customer has, on an unsolicited basis, specifically instructed the Trading Permit Holder to route that customer's order to a particular market for execution.[23] Under those circumstances, the Trading Permit Holder will not be required to make a best execution determination beyond that specific instruction; however, the Interpretation and Policy mandates that Trading Permit Holders process that customer's order promptly and in accordance with the terms of the order. The Interpretation and Policy also makes clear that where a customer has directed the Trading Permit Holder to route an order to another specific broker-dealer that is also a Trading Permit Holder, the exception will not apply to the receiving Trading Permit Holder to which the order was directed.[24]

Proposed Interpretation and Policy .07 codifies a Trading Permit Holder's obligation when it undertakes a regular and rigorous review of execution quality likely to be obtained from different market centers. These obligations are set forth and explained in various Commission releases and NASD *Notices to Members.*[25]

III. Commission's Findings

After careful review of the proposed rule change the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to self-regulatory organization.[26] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[27] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

The Commission believes that the proposed rule change is designed to protect customer orders by establishing requirements governing the trading ahead of customer orders by member firms and governing best execution and interpositioning with respect to the handling of customer orders. By CBOE aligning its customer protection rules with those of FINRA and other exchanges,[28] the Commission believes that the proposed rule change will help reduce the complexity of the customer order protection rules for those CBOE firms that also are subject to the customer protection rules of FINRA and other exchanges. Furthermore, the Commission believes that the proposed rules will help assure the protection of customer orders without imposing undue regulatory costs on industry participants.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–CBOE–2013–027), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10876 Filed 5–7–13; 8:45 am]

BILLING CODE 8011–01–P

[22] When the order is for an NMS security, these orders are often referred to as ''directed orders.'' *See* 17 CFR 242.600(b)(19). Of note, directed orders are excluded from the order routing statistics required to be produced under Rule 606 of SEC Regulation NMS. *See* 17 CFR 242.606.

[23] The Interpretation and Policy also clarifies that a Trading Permit Holder's best execution obligations extend to all customer orders and is intended to avoid the potential misimpression that the paragraph limits the scope of the rule's requirements.

[24] For example, if a customer of Trading Permit Holder Firm A directs Trading Permit Holder Firm A to route an order to Trading Permit Holder Firm B, Trading Permit Holder Firm B will continue to have best execution obligations to that customer order received from Trading Permit Holder Firm A.

[25] *See, e.g.,* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) and NASD Notice to Members 01–22 (April 2001).

[26] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] *See* notes 5 and 6 *supra.*

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69495; File No. SR–FICC–2013–04]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to the Government Securities Division Rules and the Mortgage-Backed Securities Division Clearing Rules in Connection With the Implementation of the Foreign Account Tax Compliance Act (FATCA)

May 2, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2013, the Fixed Income Clearing Corporation (''FICC'') 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 substantially prepared by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes consist of modifications to the Rulebook of the Government Securities Division (''GSD'') and the Clearing Rules of the Mortgage-Backed Securities Division (''MBSD'') (collectively, the ''Rules'') of FICC in connection with implementation of sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, that were enacted as part of the Foreign Account Tax Compliance Act, and the Treasury Regulations or other official interpretations thereunder (collectively ''FATCA'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.[3]

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

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by the clearing agency.