

necessary or appropriate in furtherance of the purposes of the Act because the change only applies to trading on CBOE.

The Exchange does not believe that the proposal to explicitly state that the \$25,000 per month strategies fees cap applies to TPH organizations as well as Trading Permit Holders will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because this is not a substantive change, but merely intended to clear up any potential confusion.

CBOE does not believe that the proposed amendment to Footnote 27 permitting complex orders that cannot be tied to a single order ID to qualify for the Discount will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because this proposed change does not affect which types of market participants qualify for the Discount; it is merely intended to make up for an Exchange system limitation. This change provides complex orders that cannot be tied to a single order ID with the ability to qualify for the Discount, just as complex orders that can be tied to a single order ID may qualify for the Discount. CBOE does not believe that this proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act for much of the same reasons. The change is not made for competitive reasons, but instead to correct for an Exchange system limitation. Further, this proposed change applies only to trading on CBOE. To the extent that the proposed change may make CBOE a more attractive trading venue for market participants at other exchanges, such market participants may elect to become CBOE 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and paragraph (f) of Rule 19b-4²² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-083 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-2013-083*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2013-083, and should be submitted on or before October 1, 2013.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70313; File No. SR-CBOE-2013-085]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

September 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 22, 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 Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f).

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 Exchange proposes to exclude the Russell 2000 Index ("RUT") from the Exchange's Volume Incentive Program ("VIP"). This would mean that RUT volume would not be included in the calculations used for determining VIP, nor would the Exchange pay out a credit for RUT trades. The reason for this proposed change is due to changing economic circumstances regarding RUT (including changed license fees (which are lower than those offered by other exchanges)³ and other effects of the new RUT licensing structure). The changed licensing structure for RUT makes it less economically feasible to include RUT in the VIP. Further, CBOE's competitive offering for RUT, including the trading of RUT over CBOE's Complex Order Book and the assessment of the Marketing Fee for RUT transactions⁴ as well as other economic circumstances regarding the trading of RUT, has caused CBOE to gain such market share that CBOE has deemed it unnecessary to offer the VIP's incentives in order to attract RUT volume (the purpose of the VIP is to attract volume via offering volume-based incentives). Unlike for other multiply-listed indexes traded at CBOE that are still included in the VIP, CBOE's competitive offering regarding RUT offers enough incentives to market participants wishing to trade RUT that including RUT in the VIP is unnecessary.

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.⁵ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4)

of the Act,⁶ which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

The Exchange believes that excluding RUT from the VIP is reasonable because the VIP is a credit program, and excluding RUT from the VIP does not impose any extra fee for RUT trades, it just prevents them from incurring a credit (or counting towards incurring credits). As such, qualifying market participants trading RUT will merely be required to pay regular transaction fees. The Exchange believes that excluding RUT from the VIP is equitable and not unfairly discriminatory because the different licensing schemes for RUT (and all licensed products) make such products incomparable, and the changed licensing structure for RUT makes it less economically feasible to include RUT in the VIP. Further, CBOE's competitive offering for RUT, including the trading of RUT over CBOE's Complex Order Book and the assessment of the Marketing Fee for RUT transactions⁷ as well as other economic circumstances regarding the trading of RUT, has caused CBOE to gain such market share that CBOE has deemed it unnecessary to offer the VIP's incentives in order to attract RUT volume (the purpose of the VIP is to attract volume via offering volume-based incentives). Unlike for other multiply-listed indexes traded at CBOE that are still included in the VIP, CBOE's competitive offering regarding RUT offers enough incentives to market participants wishing to trade RUT that including RUT in the VIP is unnecessary.

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 that excluding RUT from the VIP will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change does not affect to whom the VIP applies. Further, the different licensing schemes for RUT (and all licensed products) make such products incomparable, and the changed licensing structure for RUT makes it less economically feasible to include RUT in the VIP. The Exchange

does not believe that excluding RUT from the VIP will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because this exclusion only applies to trading on CBOE, and the VIP only applies to CBOE.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and paragraph (f) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-085 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-2013-085. This file number should be included on the subject line if email is used. To help the

³ See SR-CBOE-2013-83, which increases the Exchange's RUT Surcharge Fee to \$0.30 per contract, compared to SR-NYSEMKT-2013-65, which increased the NYSE MKT LLC ("AMEX") Royalty Fee for RUT from \$0.15 per contract to \$0.40 per contract.

⁴ See CBOE Fees Schedule, Marketing Fee table.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ See CBOE Fees Schedule, Marketing Fee table.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2013-085, and should be submitted on or before October 1, 2013.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70317; File No. SR-NYSEArca-2013-42]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Amending Rule 6.72 To Make Permanent the Penny Trading Program for Options

September 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 20, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 Rule 6.72 to make permanent the penny trading program for options. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 this filing is to amend Rule 6.72 to make permanent the penny trading program in options (the "Program"), which was approved on a limited pilot basis on January 23, 2007 (the "Penny Pilot" or, the "Pilot"), and has been expanded and extended numerous times since.³

³ Exchange Act Release No. 55156 (January 23, 2007) 72 FR 4759 (February 1, 2007) (NYSEArca-2006-73); Release No. 56150 (July 26, 2007) 72 FR 42460 (August 2, 2007) (NYSEArca-2007-56); Release No. 56568 (September 27, 2007) 72 FR 56422 (October 3, 2007) (NYSEArca-2007-88); Release No. 59628 (March 26, 2009) 74 FR 15025 (NYSEArca-2009-26); Release No. 60224 (July 1, 2009) 74 FR 32991 (July 9, 2009) (NYSEArca-2009-61); Release No. 60711 (September 23, 2009) 74 FR 49419 (September 28, 2009) (NYSEArca-2009-44); Release No. 61061 (November 24, 2009) 74 FR 62857 (December 1, 2009) (NYSEArca-2009-44); Release No. 63376 (November 24, 2010) 75 FR 75527 (December 3, 2010) (NYSEArca-2010-104); Release No. 65977 (December 15, 2011) 76 FR 79234 (NYSEArca-2011-93); Release No. 67307 (June 28, 2012) 77 FR 40110 (July 6, 2012) (NYSEArca-2012-65); Release No. 68426 (December 13, 2012) 77 FR 75224 (December 19, 2012) (NYSEArca-2012-135); Release No. 69106 (March 11, 2013) 78 FR 16552 (March 15, 2013)

NYSE Arca, having demonstrated the benefits of options trading in pennies for customers through numerous studies, proposes to make the Program permanent, but on a reduced level. NYSE Arca proposes that the Program be limited to the 150 most active multiply listed options classes.

Analysis of the Current Program

Under the Penny Pilot, the Program is currently available for 363 listed options classes. NYSE Arca conducted an analysis of penny trading in options to determine the effectiveness of the Penny Pilot within the full range of the Pilot issues. Since the Pilot was expanded over the time period of November 2009 to August 2010, the Exchange reviewed data from the last two full calendar years.

The Exchange determined that, while the overall Pilot was of great benefit to Customers and provide [sic] greater opportunities to all market participants, the benefits have been concentrated in the 150 most active Penny Pilot issues (the "Top 150"), and that the Pilot issues outside of the Top 150 (the "Bottom 203")⁴ not only failed to reap a benefit from penny trading, but resulted in more technology overhead costs to provide for capacity and speed for quote activity, and lagged the overall market in volume and in various performance statistics. As part of its analysis, the Exchange reviewed quote-to-volume ratios for the Top 150, the Bottom 203, and the Top 200 non-Penny Pilot issues.⁵

The Exchange found the following:

QUOTE TO VOLUME RATIO [January to October 2012]

Segment	Quote/ Contract
Top 50 Penny Pilot Issues	176 to 1.
Top 150 Penny Pilot Issues	216 to 1.
Top 200 Non Penny Issues	514 to 1.
Bottom 203	589 to 1.

The Exchange believes that the quote-to-volume ratios demonstrate that the

(NYSEArca-2013-22); Release No. 69790 (June 18, 2013) 78 FR 37853 (June 24, 2013) (NYSE Arca-2013-59).

⁴ For purposes of consistency, the study was conducted on issues that were in the Penny Pilot as of the end of 2012 and added to the Pilot no later than January 2011, thus excluding 9 issues. One other issue was excluded due to extenuating circumstances of the underlying. The total number of issues studied was 353. For a more detailed discussion on methodology, see NYSE U.S. Options Report on Penny Trading in Options 2012, attached as Exhibit 3 to the proposing Rule change.

⁵ Study period was January through October, 2012. The time frame was chosen to allow for a year over year comparison period in which the Penny Pilot was completely rolled out to 363 issues.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.