

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71131; File No. SR-NYSEMKT-2013-103]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Partial Cabinets and Cabinet Upgrades As Part of Its Co-location Services and To Amend the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule To Reflect the New Services

December 18, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 12, 2013, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 self-regulatory organization. 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 offer partial cabinets and cabinet upgrades as part of its co-location services and to amend the NYSE MKT Equities Price List (“Price List”) and the NYSE Amex Options Fee Schedule (“Fee Schedule”) to reflect the new services. The Exchange proposes to implement the fee change effective December 16, 2013. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://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 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 Exchange proposes to offer partial cabinets and cabinet upgrades as part of its co-location services and to amend the Price List and the Fee Schedule to reflect the new services.<sup>4</sup> The Exchange proposes to implement the fee change effective December 16, 2013.

##### Partial Cabinets

A User is able to request a physical cabinet to house its servers and other equipment in the data center.<sup>5</sup> Currently, a User only has the option of receiving an entire cabinet that is dedicated solely to that User (“dedicated cabinet”). The Exchange proposes to expand its co-location services to offer a partial cabinet alternative (“partial cabinet”). Partial cabinets would be made available in increments of eight-rack units of space.<sup>6</sup> The Exchange would allocate each

<sup>4</sup> The Securities and Exchange Commission (“Commission”) initially approved the Exchange’s co-location services in Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80) (the “Original Co-location Approval”). The Exchange operates a data center in Mahwah, New Jersey (the “data center”) from which it provides co-location services to Users. The Exchange’s co-location services allow Users to rent space in the data center so they may locate their electronic servers in close physical proximity to the Exchange’s trading and execution system. *See id.* at 59299.

<sup>5</sup> For purposes of the Exchange’s co-location services, the term “User” includes (i) member organizations, as that term is defined in the definitions section of the General and Floor Rules of the NYSE MKT Equities Rules, and ATP Holders, as that term is defined in NYSE Amex Options Rule 900.2NY(5); (ii) Sponsored Participants, as that term is defined in Rule 123B.30(a)(ii)(B)—Equities and NYSE Amex Options Rule 900.2NY(77); and (iii) non-member organization and non-ATP Holder broker-dealers and vendors that request to receive co-location services directly from the Exchange. *See, e.g.*, Securities Exchange Act Release Nos. 65974 (December 15, 2011), 76 FR 79249 (December 21, 2011) (SR-NYSEAmex-2011-81) and 65975 (December 15, 2011), 76 FR 79233 (December 21, 2011) (SR-NYSEAmex-2011-82). As specified in the Price List and the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates New York Stock Exchange LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR-NYSEMKT-2013-67).

<sup>6</sup> A full cabinet includes enough space for approximately four separate eight-rack units. The Exchange would submit a separate proposed rule change if it decided to change the manner in which space is allocated within a partial cabinet (e.g., six-rack units instead of eight-rack units).

eight-rack unit up to two kilowatts (“kW”) of power.<sup>7</sup> Consistent with existing pricing for dedicated cabinets, the Exchange would charge Users an initial fee and a monthly recurring fee for partial cabinets. The initial fee would be \$2,500 per eight-rack unit. The monthly recurring fee would be \$1,500 for one kW of allocated power and \$2,700 for two kW of allocated power.<sup>8</sup>

The Exchange is proposing this partial cabinet alternative in order to assist Users that do not need a dedicated cabinet in the data center, such as those Users with minimal power or cabinet space demands, including those Users for which the costs attendant with a dedicated cabinet are too burdensome. However, Users that do require a dedicated cabinet could continue to request them.<sup>9</sup> This proposed alternative would not impact current pricing for dedicated cabinets. The Exchange would amend the existing

<sup>7</sup> The Exchange would submit a separate proposed rule change if it decided to change the manner in which power is allocated to partial cabinets (e.g., more than two kW of power allocated per eight-rack unit).

<sup>8</sup> The second kW would therefore cost \$1,200. Power allocated to a User of a partial cabinet would be considered separate from power allocated to the same User if it also has dedicated cabinets in the data center.

<sup>9</sup> For purposes of comparison, if a User ordered a single eight-rack unit in a partial cabinet with two kW of power allocation, such User would be charged \$2,500 in initial cabinet fees (compared to \$5,000 for a dedicated cabinet) and \$2,700 in recurring monthly fees (compared to \$4,800 for a dedicated cabinet with the minimum power allocation of four kW) for total charges of \$34,900 within the first year (compared to \$62,600 for a dedicated cabinet). A partial cabinet would therefore be a more economical option. If a User ordered two separate eight-rack units in a partial cabinet with two kW of power allocation each (four kW total), such User would be charged \$5,000 in initial cabinet fees (identical to the \$5,000 for a dedicated cabinet) and \$5,400 in recurring monthly fees (compared to \$4,800 for a dedicated cabinet with the minimum power allocation of four kW) for total charges of \$69,800 within the first year (compared to \$62,600 for a dedicated cabinet). A dedicated cabinet would therefore be a more economical option. Based on the proposed pricing, the Exchange believes that the partial cabinet option would be selected by Users with power demands of three kW or less. If a User’s power demands are four kW or greater it would likely choose the dedicated cabinet option. Accordingly, if a User ordered two separate eight-rack units in a partial cabinet with two kW of power allocation for one of the units and one kW of power allocation for the other unit (three kW total), such User would be charged \$5,000 in initial cabinet fees (identical to the \$5,000 for a dedicated cabinet) and \$4,200 in recurring monthly fees (compared to \$4,800 for a dedicated cabinet with the minimum power allocation of four kW) for total charges of \$55,400 within the first year (compared to \$62,600 for a dedicated cabinet). A fourth incremental kW would add an additional \$14,400 in cost (i.e., \$1,200 × 12), at which point a dedicated cabinet would be a more economical option.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

table in the Price List and the Fee Schedule to reflect the pricing options.

Users that have several cabinets within the data center that wish to enhance privacy around their cabinets are able to purchase cages. Because more than one User could be using a partial cabinet, partial cabinets could not be located in a User's cage.

#### Initial Install Services Fee

In conjunction with the proposed offering of partial cabinets, the Exchange also proposes to charge a lower Initial Install Services fee for a partial cabinet. The proposed fee would be lower because the services required of the Exchange for the installation of an eight-rack unit in a partial cabinet would be less than the services required for the installation of a dedicated cabinet. The current Initial Install Services fee is \$800 per dedicated cabinet, which includes initial racking of equipment in the dedicated cabinet and provision of up to 10 cables and four hours of labor. The Exchange proposes to charge a \$400 Initial Install Services fee for an eight-rack unit in a partial cabinet, which would include initial racking of equipment and provision of up to five cables and two hours of labor.

#### Cabinet Upgrades

The Exchange makes dedicated cabinets available with standard power allocation of either four or eight kW.<sup>10</sup> However, Users that require additional power allocation may prefer to maintain their hardware within a particular

<sup>10</sup> A User is generally able to determine an approximate amount of power that it will typically consume in its dedicated cabinet. A User would request either a four or eight kW dedicated cabinet based on its anticipated peak power consumption. A User's typical power consumption would be expected to be less than this anticipated peak power consumption, but could also rise above this anticipated peak power consumption during certain times of the day or certain periods of the month when equipment in the cabinet consumes additional power.

The Exchange allocates power in circuits with "baseline" capacity of either four or eight kW. A circuit could trip when power consumption exceeds capacity. To avoid this, the Exchange allocates "buffer" capacity in addition to the baseline capacity. When combined, this "total" allocation is approximately 80% of the amount of power consumption that would trip a circuit. The "total" power capacity allocated to a four kW dedicated cabinet is slightly more than five kW. The "total" power capacity allocated to an eight kW dedicated cabinet is between 10 and 11 kW. The Exchange charges Users for the full baseline amount of power allocated to dedicated cabinets (i.e., either four or eight kW) regardless of whether such allocated power is consumed and, if any of the buffer is used, for that power consumption as well on a per kW basis. For example, if a User consumes its four kW of baseline allocation and a fraction of an additional kW, the Exchange would charge the User for five kW total.

dedicated cabinet rather than add an additional dedicated cabinet. Specifically, Users may develop their hardware infrastructure within a particular dedicated cabinet in such a way that, if expansion of such hardware is needed, it can be accomplished within the space constraints of that particular dedicated cabinet. If this type of User requires additional power allocation, it would likely want to so modify its existing cabinet rather than taking an additional dedicated cabinet due to the expense of re-developing its infrastructure within such additional dedicated cabinet. A \$5,000 initial dedicated cabinet fee would also apply if the User received an additional dedicated cabinet.

The Exchange proposes to offer a new "Cabinet Upgrade" alternative and related fee in order to accommodate requests for additional power allocation beyond the typical amount that the Exchange allocates per dedicated cabinet, at which point the Exchange must upgrade the cabinet's power capacity. These Cabinet Upgrades typically entail overhauling wiring, circuitry and hardware for the dedicated cabinet so that it can handle the increased power. Cabinet Upgrades require additional Exchange resources beyond those covered under the initial dedicated cabinet fee or the Initial Install Services fee, including with respect to labor and equipment.

The Exchange proposes to charge a one-time Cabinet Upgrade fee of \$9,200 when a User requests additional power allocation for its dedicated cabinet such that the Exchange must upgrade the dedicated cabinet's capacity. A Cabinet Upgrade would be required when power allocation demands exceed 11 kW.<sup>11</sup> However, in order to incentivize Users to upgrade their dedicated cabinets, the Exchange proposes that the Cabinet Upgrade fee would be \$4,600 for a User that submits a written order for a Cabinet Upgrade by January 31, 2014, provided that the Cabinet Upgrade becomes fully operational by March 31, 2014.

#### General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, an ATP Holder, a Sponsored Participant or an agent thereof (e.g., a service bureau

<sup>11</sup> A dedicated cabinet could be upgraded to accommodate a total allocation of up to approximately 20 kW of power, after which a User would require an additional dedicated cabinet.

providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;<sup>12</sup> and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.<sup>13</sup>

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>15</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. First, the proposed partial cabinets would make an alternative available to Users that do not need a dedicated cabinet in the data center, such as those Users with minimal power or cabinet

<sup>12</sup> As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

<sup>13</sup> See SR-NYSEMKT-2013-67, *supra* note 5 at 50471. The Exchange's affiliates have also submitted the same proposed rule change to provide for partial cabinets, Cabinet Upgrades and related fees. See SR-NYSE-2013-81 and SR-NYSEArca-2013-143.

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

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

space demands, including those Users for which the costs attendant with a dedicated cabinet are too burdensome. However, Users that do require a dedicated cabinet could continue to request them. Second, the proposed Cabinet Upgrades would make an alternative available to Users that have already invested in hardware infrastructure within a particular dedicated cabinet and that require additional power allocation, but do not want an additional dedicated cabinet due to the expense of re-developing infrastructure within such additional dedicated cabinet. The Exchange believes that the proposal would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would provide Users with additional choices with respect to the optimal size of their cabinets and the number of cabinets they utilize, which could therefore lead to cost savings that Users may choose to pass on to their customers.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>16</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. Overall, the Exchange believes that the proposed change is consistent with the Act because the Exchange offers the co-location services described herein (i.e., the proposed partial cabinets and Cabinet Upgrades) as a convenience to Users, but in doing so will incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such services. Additionally, the proposed fees relate to the level of services provided by the Exchange and, in turn, received by the User.

The Exchange believes that the proposed pricing for partial cabinets is reasonable because a partial cabinet would be a more economical option for certain Users that require only limited power or limited cabinet space, as compared to pricing for a dedicated cabinet, whereas a dedicated cabinet would be a more economical option for certain Users that have higher power or space demands.<sup>17</sup> The proposed pricing for partial cabinets and the Cabinet

Upgrade fee is also reasonable because it would allow Users to select options that are better suited for their needs (e.g., a dedicated cabinet compared to a partial cabinet and a Cabinet Upgrade compared to an additional dedicated cabinet).

The proposed pricing for partial cabinets is also reasonable because it is comparable to pricing for "shared cabinet space" available to users of co-location facilities of The NASDAQ Stock Market LLC ("NASDAQ").<sup>18</sup> Specifically, NASDAQ charges \$600 for 500 watts ("Ws") of power allocation in shared cabinet space. If a NASDAQ co-location user were to request up to two kW of allocated power in shared cabinet space it would be charged \$2,400 per month (one kW is equal to 1,000 Ws and two kW is therefore equal to 2,000 Ws), which is comparable to the proposed \$2,700 monthly recurring charge for the same power allocation in an eight-rack unit in a partial cabinet in the data center. However, the Exchange understands that each unit of NASDAQ shared cabinet space is smaller in space than the partial cabinets proposed by the Exchange (e.g., four-rack units on NASDAQ compared to eight-rack units in the Exchange's data center).<sup>19</sup> The Exchange also believes that the proposed Initial Install Services fee for a partial cabinet is reasonable because it is 50% of the dedicated cabinet Initial Install Services fee and likewise provides for 50% of the resources (i.e., two hours of labor instead of four hours and five cables instead of 10 cables) associated with the dedicated cabinet Initial Install Services fee.

The Exchange also believes that the Cabinet Upgrade fee is reasonable because it would function similar to the NASDAQ charges for comparable services. In particular, NASDAQ charges a premium initial installation fee of \$7,000 for a "Super High Density Cabinet" (between 10 kW and 17.3 kW) compared to \$3,500 for other types of cabinets with less power.<sup>20</sup> The Exchange charges only one flat rate for its initial cabinet fees (\$5,000), regardless of the amount of power allocation. NASDAQ also charges an additional \$7,000 for a Super High Density Cabinet Kit in relation to the additional customized equipment required to adequately cool a Super

High Density Cabinet.<sup>21</sup> The Exchange understands that NASDAQ therefore charges at least \$10,500 in additional initial costs for a Super High Density Cabinet compared to other cabinets (compared to the proposed \$9,200 Cabinet Upgrade fee). The Exchange also believes that the proposed Cabinet Upgrade fee is reasonable because it would permit the Exchange to recover its expenses related to Cabinet Upgrades.

The proposed 50% reduced Cabinet Upgrade fee for a User that submits a written order for a Cabinet Upgrade by January 31, 2014, provided that the Cabinet Upgrade becomes fully operational by March 31, 2014, is reasonable because it would provide an incentive for Users to upgrade the capacity of their dedicated cabinets.

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the related services, which would be available to all Users. The Exchange therefore believes that the proposed change is equitable and not unfairly discriminatory because it would result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services would be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same products and services are available to all Users).

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>22</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance

<sup>18</sup> See NASDAQ Rule 7034.

<sup>19</sup> NASDAQ's initial fee for shared cabinet space is charged on an hourly basis and is therefore difficult to compare to the proposed initial fee for partial cabinets in the Exchange's data center, which is fixed.

<sup>20</sup> See *supra* note 18.

<sup>21</sup> *Id.*

<sup>22</sup> 15 U.S.C. 78f(b)(8).

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> See, e.g., *supra* note 9.

of the purposes of the Act because any market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange could have access to the co-location services provided in the data center. This is also true because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same range of products and services are available to all Users).

The Exchange believes that the proposed partial cabinet and Cabinet Upgrade alternatives would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because they would enhance competition by making additional choices in services available to Users and thereby satisfy User demand for partial cabinets and for dedicated cabinets with increased power capacity. The proposed change would also enhance competition because it would help Users meet the growing needs of their business operations. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to provide services to Users that are similar to services available on other markets. In this regard, the Exchange notes that NASDAQ also makes a shared cabinet space option and a "Super High Density Cabinet" option available to users of its co-location facilities.<sup>23</sup>

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>24</sup> and Rule 19b-4(f)(6) thereunder.<sup>25</sup> Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>26</sup> and Rule 19b-4(f)(6) thereunder.<sup>27</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>28</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>29</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange requested waiver of the 30-day operative delay in order to immediately implement the proposed rule change so that Users may experience the benefits of such proposed change as soon as possible. The Exchange stated that the proposal would merely make smaller increments of a standard, dedicated cabinet available on a voluntary basis to Users that do not require a full, dedicated cabinet. Users that do require full, dedicated cabinets could continue to request them. The Exchange also stated that the proposal would provide greater flexibility to Users that prefer to increase power allocation in a particular dedicated cabinet rather than incurring the cost of maintaining an additional dedicated cabinet. The Exchange further represented that it operates in a highly competitive market in which several competing exchanges already offer

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>27</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

<sup>28</sup> 17 CFR 240.19b-4(f)(6).

<sup>29</sup> 17 CFR 240.19b-4(f)(6)(iii).

similar co-location services. For the above reasons, the Commission believes waiver of the operative delay is appropriate and hereby grants the Exchange's request and designates the proposal operative upon filing.<sup>30</sup>

At any time within 60 days of the filing of such 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 shall institute proceedings under Section 19(b)(2)(B)<sup>31</sup> of the Act 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-103 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-NYSEMKT-2013-103. 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

<sup>30</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>31</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>23</sup> See *supra* note 18.

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-NYSEMKT-2013-103 and should be submitted on or before January 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

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

[FR Doc. 2013-30594 Filed 12-23-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71124; File No. SR-CBOE-2013-123]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Credit Option Margin Pilot Program

December 18, 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 December 12, 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 and II 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 extend its Credit Option Margin Pilot Program

through January 16, 2015. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

On February 2, 2011, the Commission approved the Exchange's proposal to establish a Credit Option Margin Pilot Program ("Program").<sup>3</sup> The proposal became effective on a pilot basis to run on a parallel track with Financial Industry Regulatory Authority ("FINRA") Rule 4240 that similarly operates on an interim pilot basis.<sup>4</sup>

On January 17, 2012, the Exchange filed a rule change to, among other things, decouple the Program with the FINRA program and to extend the expiration date of the Program to January 17, 2013.<sup>5</sup> The Program, however, continues to be substantially similar to the provisions of the FINRA program. Subsequently, the Exchange filed a rule change to extend the

<sup>3</sup> See Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) order approving (SR-CBOE-2010-106). To implement the Program, the Exchange amended Rule 12.3(l), *Margin Requirements*, to make CBOE's margin requirements for Credit Options consistent with Financial Industry Regulatory Authority ("FINRA") Rule 4240, *Margin Requirements for Credit Default Swaps*. CBOE's Credit Options (*i.e.*, Credit Default Options and Credit Default Basket Options) are analogous to credit default swaps.

<sup>4</sup> See Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; SR-FINRA-2009-012).

<sup>5</sup> See Securities and Exchange Act Release No. 66163 (January 17, 2012), 77 FR 3318 (January 23, 2012) (SR-CBOE-2012-007).

program until January 17, 2014.<sup>6</sup> The Exchange believes that extending the expiration date of the Program further will allow for further analysis of the Program and a determination of how the Program should be structured in the future. Thus, the Exchange is now currently proposing to extend the duration of the Program until January 16, 2015.

The Exchange notes that there are currently Credit Options listed for trading on the Exchange that have open interest. As a result, the Exchange believes that is in the public interest for the Program to continue uninterrupted. In the future, if the Exchange proposes an additional extension of the Credit Option Margin Pilot Program or proposes to make the Program permanent, then the Exchange will submit a filing proposing such amendments to the Program.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, 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 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>9</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 that the proposed rule change will further the purposes of the Act because, consistent with the goals of the Commission at the initial adoption of the program, the margin requirements set forth by the proposed rule change will help to stabilize the financial markets. In addition, the proposed rule

<sup>6</sup> See Securities and Exchange Act Release No. 68539 (December 27, 2012), 78 FR 138 (January 2, 2013) (SR-CBOE-2012-125).

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

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

<sup>9</sup> *Id.*

<sup>32</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.