

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69200; File No. SR-CBOE-2013-031)

March 21, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Equity Rights Program of CBSX

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 March 7, 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

CBOE proposes to modify an equity rights program of CBOE Stock Exchange, LLC (“CBSX”).³ There are no proposed changes to the rule text.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ CBSX is a stock trading facility of the Exchange.

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

1. Purpose

The purpose of the Program is to promote the long-term interests of CBSX by providing incentives designed to encourage current and future CBSX owners and market participants to contribute to the growth and success of CBSX, by being active liquidity providers and takers to provide enhanced levels of trading volume to CBSX's market, through an opportunity to increase their proprietary interests in CBSX's enterprise value.

Under the Program, in exchange for providing order flow to CBSX, a participant may earn EPE Units representing the right to acquire Series B Shares of CBSX pursuant to the terms of the Program. Under the Program, a participant may earn up to the number of EPE Units that would constitute, upon conversion, up to an aggregate of 19.99% of then-outstanding CBSX equity ("Earn-Out Percentage"). EPE Units may be earned based on a participant's trading activity in the initial three years of the Program ("Measurement Period One") and in years three⁴ [sic] through five of the Program ("Measurement Period Two"). EPE Units are earned and issued on the day following the end of the applicable Measurement Period.

A participant will be eligible to earn EPE Units in Measurement Period One provided that the participant is a Trading Permit Holder ("TPH") in good standing of CBSX, and that the participant has achieved "MADV" during that period. "MADV" means a "minimum average daily volume" of executions by the participant at CBSX that equals at least 0.25% of "TCAV." "TCAV" means the "total consolidated average daily trading volume" of all NMS stocks as

⁴ Commission staff confirmed on a conference call with CBOE staff that Measurement Period Two consists of years 4 and 5 of the Program. Conference call between Tina Barry, Senior Special Counsel, Division of Trading and Markets, Commission, and Laura Dickman, Attorney, CBOE, on March 12, 2013.

disseminated pursuant to an effective national market system plan during the applicable Measurement Period, less a 3% downward adjustment for trades in quantities below 100 shares (odd-lot trades).⁵ Upon achieving the MADV, a participant will receive EPE Units in an amount equal to an Earn-Out Percentage of 1.4%. For each 0.01% contribution of TCAV above MADV, the participant's Earn-Out Percentage will increase 0.16% (up to a maximum of the Measurement Period One Cap, as defined below). For example, if a participant achieves 0.25% of TCAV during Measurement Period One, the participant will receive an Earn-Out Percentage of 1.4%. If the participant achieves 0.26% of TCAV during Measurement Period One, the participant will receive an Earn-Out Percentage of 1.56%. This would continue up to the Measurement Period One Cap. Participants will not earn any EPE Units if they do not achieve MADV during Measurement Period One. Notwithstanding the foregoing, in the event of a liquidity event occurring in the first year of Measurement Period One, the Earn-Out Percentage may not exceed 7.5%.

A participant will be eligible to earn EPE Units in Measurement Period Two provided that the participant is and remains a TPH in good standing of CBSX and that the participant

⁵ Currently, odd-lot trades are not disseminated under national market system ("NMS") plans and thus are not included in total consolidated trading volume of NMS stocks. Based on industry discussions, CBSX expects that within the next year, NMS plans will require exchanges to report odd-lot trades to the tape under those plans. Pursuant to data that CBSX received from the Consolidated Tape Association (CTA) and Consolidated Quotation (CQ) Plans, as well as the OTC/UTP Plan (the two national market system plans for reporting stock trades), if odd-lot trades were reported to the tape, then the volume of larger exchanges (e.g. NYSE, NASDAQ) would increase by approximately 5%, which would cause total consolidated trading volume of NMS stocks to increase close to that amount. However, the volume of CBSX would increase by approximately 1.5% to 2.0%. The increase in total consolidated trading volume would thus be skewed against and much higher than the increase in volume on CBSX. The purpose of the 3% adjustment to total consolidated trading volume is to address this bias. CBSX believes the Program would make it unnecessarily more difficult to achieve MADV without the adjustment, as the amount of odd-lot trading on CBSX would not offset the amount of the total consolidated trading volume increases.

achieved the MADV in Measurement Period One. Participants will not earn any EPE Units during Measurement Period Two if their contributions of TCAV are less than or equal to the MADV. For each 0.01% contribution of TCAV above MADV in Measurement Period Two, the participant will receive an EPE Unit Earn-Out 0.058706% up to a maximum of the Measurement Period Two Cap (as defined below). For example, if a participant achieves MADV during Measurement Period Two, the participant will earn no EPE Units. If the participant achieves 0.26% of TCAV during Measurement Period Two, the participant will receive an Earn-Out Percentage of 0.058706%. If the participant achieves 0.27% of TCAV during Measurement Period Two, the participant will receive an Earn-Out Percentage of 0.117412%. This would continue up to the Measurement Period Two Cap.

As mentioned above, certain caps apply under the Program. In Measurement Period One, a participant may earn a maximum Earn-Out Percentage of 15% (the “Measurement Period One Cap”). In Measurement Period Two, a participant may earn a maximum Earn-Out Percentage of 4.99% (the “Measurement Period Two Cap” and, together with the Measurement Period One Cap, the “Participant Cap”). In addition, no additional EPE Units may be earned or issued under the Program if those additional EPE Units, together with the EPE Units outstanding at the time, would be convertible into Series B Shares representing more than a 33% percentage interest of then-outstanding CBSX equity (the “Program Cap”). Any awards otherwise in excess of the Program Cap will be reduced among participants on a pro-rata basis.

EPE Units may be converted to Series B Shares upon a “Conversion Event.” A Conversion Event includes (i) a transfer of a majority of the outstanding voting shares of CBSX to a third party and certain other liquidity events, (ii) in the event that during any six month period during Measurement Period One the trading volume on CBSX equals at least 3% of

TCAV, (iii) the expiration of Measurement Period Two, or (iv) the termination of the Program. Until the conversion of the EPE Units upon the occurrence of a Conversion Event, the EPE Units will not entitle the holder thereof to any voting, allocation or distribution rights or any share of the income, gain, loss, deduction or other tax attributes or assets of CBSX, or any rights to participate as a CBSX owner in any way. The Series B Shares issuable upon conversion of EPE Units as a result of a Conversion Event will entitle the holder thereof to all of the rights, benefits, privileges and obligations then applicable under the Third Amended and Restated Operating Agreement of CBSX, dated as of December 30, 2011, as amended from time to time (the “Operating Agreement”) to outstanding Series B Shares and the holder will become an owner with respect to the Series B Shares issued upon conversion. Upon the occurrence of a Conversion Event, EPE Units earned by a participant will, at participant’s election, convert into Series B Shares.

With respect to any or all Series B Shares and/or EPE Units held by a participant, CBSX will have the right to purchase from the participant up to all of the participant’s Series B Shares or EPE Units at a price based on a valuation provided by an independent third party agreed upon by CBSX and the participant (the “Independent Auditor”). CBSX may exercise its call right at any time, in CBSX’s sole discretion, after Measurement Period Two. CBSX may exercise its call right no more than one (1) time with respect to any participant.

With respect to any or all Series B Shares held by a participant that have been earned under the Program, the participant will have the right to sell to CBSX up to all of the participant’s Series B Shares so earned at a price based on a valuation provided by the Independent Auditor. A participant may exercise its put right at any time, in the participant’s sole discretion, after two years after the occurrence of a Conversion Event, provided that (i) no

more than 20% of the participant's ownership (as of the date of the first put exercise) may be put in any 12-month period; (ii) CBSX may limit the participant's exercise of the put right in any given period to the extent necessary to preclude the Independent Auditor from issuing an opinion that raises substantial doubt about CBSX's ability to continue as a going concern for the subsequent 12 months; and (iii) exercise of the put right will in all respects remain subject to the terms and conditions of Section 1.8 of the Operating Agreement.⁶ The costs of the Independent Auditor's valuation and going concern assessment will be borne solely by the participant(s) seeking to exercise the put right.

All CBSX Series B Owners at the date of effectiveness of the Program, and any subsequent Series B Owner that purchases Series B Shares in an amount equaling 0.01% percentage interest⁷ and otherwise qualifies for Program participation during an Enrollment Period, may request designation as a participant under the Program. "Enrollment Period" means a period of time designated by the Board from time to time to allow interested qualifying parties to enroll in the Program and satisfy the eligibility criteria required of Program participants. In

⁶ Section 1.8 of the Operating Agreement provides that notwithstanding anything otherwise contained in the Operating Agreement to the contrary, so long as CBSX is a facility of CBOE, in the event that CBOE, in its sole discretion, determines that any action, transaction or aspect of an action or transaction, is necessary or appropriate for, or interferes with, the performance or fulfillment of CBOE's regulatory functions, its responsibilities under the Act or as specifically required by the Committee, (i) CBOE's affirmative vote will be required to be included in order to constitute a super majority vote of the owners," (ii) without CBOE's affirmative vote no such action, transaction or aspect of an action or transaction will be authorized, undertaken or effective, and (iii) CBOE will have the sole and exclusive right to direct that any required, necessary or appropriate act, as it may determine in its sole discretion, to be taken or transaction be undertaken by or on behalf of CBSX without regard to the vote, act or failure to vote or act by any other party in any capacity.

⁷ Section 3.2 of the Operating Agreement provides that the Board may issue Series B Shares to new Owners in its sole discretion, up to 0.01% of then-outstanding CBSX equity. In connection with the approval of the Program, the Board authorized issuance of 0.01% of Series B Shares to any TPH that requests to participate in the Program and satisfies the other eligibility criteria for the Program, as described in this filing.

addition, to be designated as a participant, an applicant must: (i) be a TPH in good standing of CBSX; (ii) qualify as an “accredited investor” as such term is defined in Regulation D of the Securities Act of 1933;⁸ and (iii) have executed all required documentation for Program participation. All applicants will be subject to the same eligibility and designation criteria, and all Participants will participate in the Program on the same terms, conditions and restrictions.

As discussed above, the purpose of the Program is to encourage TPHs to direct greater trade volume to CBSX to enhance trading volume in CBSX’s market. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges currently engage in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.⁹ The Program similarly intends to attract order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Program will similarly reward the liquidity providers that provide this additional volume with a potential proprietary interest in CBSX.

The specific volume thresholds of the Program’s Measurement Periods were set based upon business determinations and an analysis of current volume levels. The volume thresholds

⁸ The purpose of this criterion relates to the ability of CBSX to sell Series B Shares pursuant to an exemption from registration under the Securities Act of 1933. The definition of “accredited investor” under Rule 501(a)(1) of the Act includes any broker or dealer registered pursuant to Section 15 of the Act. CBOE Rules 3.2(a)(ii) and 3.3(a)(ii) require a TPH to be registered as a broker or dealer pursuant to Section 15 of the Act, so all CBSX TPHs will satisfy this criterion.

⁹ See, e.g., Securities Exchange Act Release No. 34-62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR-NSX-2010-006) (order approving National Stock Exchange, Inc. equity rights program [sic]); and Securities Exchange Act release No. 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-018) (order approving NYSE Amex LLC (now NYSE MKT LLC) options facility, including a volume-based equity plan).

are intended to incentive firms to increase the number of orders that are sent to CBSX to achieve the next threshold. Increasing the number of orders that are sent to CBSX will in turn provide tighter and more liquid markets, and therefore attract more business overall.

CBSX currently intends to initiate an Enrollment Period, and thereafter commence Measurement Period One on a date determined by CBSX after effectiveness of the instant rule filing. CBSX will notify TPHs of the implementation of the Program and the dates of the Enrollment Period by regulatory circular, and will post a copy of this rule filing on its website. Any CBSX TPH that is interested in participating in the Program may contact CBSX for more information and legal documentation and will be required to enter into a nondisclosure agreement regarding this additional program information.

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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)¹² requirement

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² Id.

that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹³ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

In particular, the proposed rule change is equitable and not unfairly discriminatory, because all TPHs may elect to participate (or elect to not participate) in the Program and earn EPE Units on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all TPHs have the ability to satisfy them. The Board also has authorized CBSX to issue Series B Shares to any TPH that requests designation to participate in the Program and otherwise satisfies the eligibility criteria to ensure that all TPHs will have the opportunity to own Series B Shares and thus participate in the Program if they so choose. In addition, participants will receive Earn-Out Percentages based on fixed volume thresholds that will apply to all participants. The Exchange believes the Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Program is designed to bring greater volume and liquidity to CBSX, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

¹³ 15 U.S.C. 78f(b)(4).

Given the robust competition for volume among equity markets, many of which offer the same products, implementing a program to attract orders like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller equity markets, such as CBSX, which is competing for volume with much larger exchanges that dominate the equity trading industry. CBSX has a trading volume of less than 1% of total consolidated trading volume, so it is unlikely that the Program could cause any competitive harm to the equity market or to market participants, even though the Program is offering equity rights to participants in exchange for participants' provision of liquidity. The Program is a modest attempt by a small equity market to attract order volume away from larger competitors by adopting an innovative pricing strategy, as evidenced by the volume thresholds of the Program that represent fractions of 1% of TCAV. In support of this, the Exchange notes that, unless there is a liquidity event or the Program terminates, participants may only convert their EPE Units earned during Measurement Period One to Series B Shares if there is a six-month period during which the trading volume on CBSX equals at least 3% of TCAV. While such percentage of TCAV would represent a large volume increase for CBSX, it would represent a minimal reduction in volume of its larger competitors in the industry.

The Exchange notes that access to exchange quotes is also more efficient than ever and helps to promote price transparency and competition among exchanges for order flow. Orders are processed and executed electronically in milliseconds, and markets are more open to new users than ever before. Order routers can simultaneously view and execute orders at the exchange with the lowest transaction fees when more than one exchange has, or may match, the best price. When more than one exchange is displaying the best price (which is often the case), brokers often assign lowest priority in their order routing tables to the exchange with the highest

transaction fees (or lowest rebates). This means that if an exchange sets high fees (or low rebates), it risks losing business to exchanges with lower fees (or higher rebates)—the same competitive pressure used by our free markets every day to constrain price. Plus, broker-dealers, who have accepted responsibility for handling orders on behalf of customers, are monitoring displayed quotes. They are typically more sophisticated and better-informed market participants than customers in non-financial markets, and therefore are better able to make the types of decisions that will produce efficient markets and constrain prices. Equity markets have different pricing models based on their competitive assessment of the incentives that will best attract order flow and liquidity. This competition has helped to exert competitive pressure on the exchanges' fee structure. The Exchange believes that the Program will help further competition, because market participants will have yet another option in determining where to execute orders and post liquidity if they factor the benefits of CBSX equity participation into the determination.

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. CBOE believes that the proposed rule change will improve competition by providing market participants with another option when determining where to execute orders and post liquidity. See additional discussion above under "Statutory Basis" regarding the proposed rule change's impact on competition.

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 Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-031 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-2013-031. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

comments on the Commission's Internet website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2013-031 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).