

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71880; File No. SR-CBOE-2014-036)

April 4, 2014

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on April 1, 2014, 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

CBOE proposes to amend Rule 51.2 to permit CBOE to end trading on the CBOE Stock Exchange, LLC (“CBSX”) as of the close of business on April 30, 2014 (the “Closing Date”). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

CBSX, of which CBOE is a partial owner, is regulated as a stock trading facility of the Exchange under Section 3(a)(2) of the Exchange Act.³ Section 9.15 of the Third Amended and Restated Operating Agreement of CBOE Stock Exchange, LLC, dated as of December 30, 2011 between CBOE and the other owners (“Non-CBOE Owners”) of CBSX (“Operating Agreement”), requires the prior affirmative vote of CBOE,⁴ as well as the affirmative vote by each of the CBSX Board and a Super Majority of the Owners of CBSX,⁵ prior to CBSX: (i) materially changing CBSX’s business model; or (ii) changing the status of or registration of CBSX as a facility of CBOE. Each of CBOE, the Board, and a Super Majority of Owners has affirmatively approved the ending of CBSX trading operations and ceasing to operate CBSX as a

³ In 2007, the Commission approved the establishment of CBSX as a facility of the Exchange. See Securities Exchange Act Release No. 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007).

⁴ CBOE’s prior affirmative vote is required so that CBOE will have the opportunity to determine, in advance of action taken by the CBSX Board of Directors (“Board”) or the Non-CBOE Owners, whether a proposed action, transaction, or aspect of an action or transaction requiring a Super Majority of the Owners (as defined below) would interfere with the performance of CBOE’s regulatory functions, its responsibilities under the Exchange Act or as specifically required by the SEC (“Regulatory Requirements”).

⁵ Section 2.1(a)(26) of the Operating Agreement generally defines “Super Majority of the Owners” to mean, subject to the prior affirmative vote of CBOE as to its Regulatory Requirements, the affirmative vote of both: (i) all of the Owners of the Series A voting shares at the time (currently CBOE), and (ii) Owners of Series B voting shares representing at least a 20% interest in CBSX. While not material to a Super Majority, the Exchange notes that CBSX also has Series C non-voting restricted shares for Management Owners.

facility of the Exchange. This rule filing is not proposing any change to the ownership structure of CBSX. The proposed rule change is intended to further the Exchange's strategic goal to focus its resources on other business opportunities while fulfilling its regulatory obligations under the Exchange Act. CBSX's Trading Permit Holders ("TPHs") will continue to be able to execute transactions in stocks on other stock-trading venues.

Within seven days of filing the proposed rule change, the Exchange will inform all CBSX TPHs by Regulatory Circular that CBSX will end trading operations as of the close of business on the Closing Date. The Regulatory Circular will also inform all TPHs that the Exchange will terminate the TPH status of any remaining CBSX TPHs on August 7, 2014,⁶ although CBSX TPHs may voluntarily terminate their TPH status prior to that date.⁷ Once the proposed rule change is operative, CBSX will no longer accept new TPH applications or further consider any pending TPH applications.

CBOE will continue to act as designated examining authority ("DEA") for each CBSX TPH, for which CBOE is DEA, until the Securities and Exchange Commission (the "Commission") selects another self-regulatory organization ("SRO") to perform that function or until August 7, 2014, whichever occurs first.⁸ Moreover, all CBOE rules applicable to CBSX

⁶ All CBSX TPHs are required to become members of a national securities association (*i.e.*, the Financial Industry Regulatory Authority (FINRA)) on or before August 7, 2014. See Securities Exchange Act Release No. 71513 (February 7, 2014), 79 FR 8771 (February 13, 2014) (SR-CBOE-2013-100) (order approving proposed rule change relating to CBSX TPH eligibility).

⁷ As of April 1, 2014, there are seven CBSX TPHs that are not members of another SRO (as defined below) ("CBSX-only TPHs"). None of the CBSX-only TPHs effect trades, nor have they effected trades in recent months, on CBSX.

⁸ The Exchange also represents that it will move to amend or cancel its participation in any existing Exchange Act Rule 17d-2 Plans for Allocation of Regulatory Responsibilities regarding CBSX as appropriate in connection with the conclusion of all open matters relating to the Exchange's regulation of CBSX.

(“CBSX Rules”)⁹ will remain in effect after the Closing Date, so that CBOE will retain disciplinary jurisdiction over all CBSX TPHs and persons associated with CBSX TPHs with respect to all matters that occurred on or before the Closing Date, pursuant to CBOE Rules 17.1 and 50.2.¹⁰ CBOE Rule 17.1 generally provides that a TPH or a person associated with a TPH shall continue to be subject to the disciplinary jurisdiction of the Exchange following such person’s termination as a TPH or person associated with a TPH with respect to matters that occurred prior to such termination or with respect to the failure to honor an arbitration award pursuant to Chapter XVIII of CBOE Rules; provided that written notice of the commencement of an inquiry into such matter is given by the Exchange to such former TPH or former person associated with a TPH within one year of termination of TPH or person associated with a TPH status. Such notice requirement does not apply to a TPH or person associated with a TPH who at any time after a termination subjects himself to the disciplinary jurisdiction of the Exchange by becoming a TPH or person associated with a TPH. CBOE Rule 50.2 (and CBSX Appendix A) incorporates by reference the application of CBOE Rule 17.1 to CBSX TPHs and persons associated with CBSX TPHs.

CBSX, CBOE and each of the Non-CBOE Owners will each continue to be required to maintain books and records as required under the Operating Agreement.¹¹ Also, pursuant to

⁹ See CBOE Rules Chapter L – LIV (including Appendix A).

¹⁰ Because all CBSX Rules will remain in effect after the close of business on the Closing Date, CBOE Rule 50.6, which limits the liability of CBSX under the same terms and conditions as CBOE Rules 2.24, 6.7 and 6.7A limits the liability of CBOE, will also remain in effect.

¹¹ Section 6.15(a) of the Operating Agreement states that CBOE and each of the Non-CBOE Owners acknowledge that to the extent the following are related to the CBSX trading platform for securities other than options, the books, records, premises, officers, directors, agents and employees of each of the Non-CBOE Owners shall be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Exchange Act. Section 6.15(b)

Section 5.7 of the Operating Agreement, CBSX, and to the extent that it relates to CBSX, each Owner, agrees to comply with the federal securities laws and the rules and regulations thereunder; to cooperate with the Commission and CBOE pursuant to their regulatory authority and the provisions of the Operating Agreement; and to engage in conduct that fosters and does not interfere with the CBSX's and CBOE's ability 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

provides that the books, records, premises, officers, directors, agents, and employees of CBSX, to the extent related to its activities as a stock trading facility of CBOE, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Exchange Act. Section 6.15(c) provides that CBSX and its Owners and their respective officers, directors, agents, and employees irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and CBOE for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, CBSX in its capacity as a stock trading facility of CBOE (and shall be deemed to agree that CBSX may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency. Section 6.15(c) further provides that for so long as CBSX is a facility of CBOE and to the extent related to CBSX's activities as a stock trading facility, the provisions of paragraph (c) shall not apply to CBOE and its respective officers, directors, agents and employees. Finally, Section 6.15(d) provides that, with respect to Section 6.15, CBSX and each of its Owners shall take such action as is necessary, unless otherwise provided for by law, written statement of policy, individual contract or otherwise, to ensure that their officers, directors, agents, and employees consent in writing to the applicability of this provision with respect to CBSX-related activities.

The Exchange represents that it will retain its status as SRO to the CBSX facility under Section 1.7 of the Operating Agreement for as long as CBSX is a facility under the Exchange Act. The Exchange further represents that there will be adequate funding to carry out regulatory obligations related to CBSX until it ceases to be a facility of CBOE. Lastly, under the proposed rule change, CBOE will not be able to begin trading in securities other than options without first filing a proposed rule change with the Commission pursuant to Rule 19b-4 under the Exchange Act.¹²

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Exchange Act.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ 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 facilitating 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)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

¹² 17 CFR 240.19b-4.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ Id.

In particular, the proposed rule change will allow CBOE to focus its resources on business opportunities other than stock trading on CBSX and to fulfill its regulatory obligations under the Exchange Act. Current CBSX TPHs will continue to be able to send stock trades to other stock trading venues, which include other national securities exchanges, alternative trading systems, and the over-the-counter market generally. Under the proposal, in addition to this filing, TPHs will receive prior written notice by Regulatory Circular of CBSX's intention to cease trading operations so that the TPHs will have time to route their future stock transactions to other markets.¹⁶ Moreover, all CBSX TPHs will receive prior notice that CBOE will terminate their TPH status in CBSX as of August 7, 2014, unless the TPH voluntarily terminates its TPH status prior to such date.¹⁷ CBOE will remain DEA of each CBSX TPH for which it currently performs that function until the Commission selects another SRO to perform that function or until August 7, 2014, whichever comes first. The proposed rule change is therefore consistent with the requirements of Section 6(b)(5) of the Exchange Act, that rules of an exchange be designed to facilitate 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.

The Exchange believes further that the proposed rule change promotes the protection of investors and the public interest, in that it is intended to permit the CBOE to devote its resources more fully to other business opportunities, while fulfilling its regulatory obligations under the Exchange Act. Moreover, because all CBSX Rules will remain in effect after the close of business on the Closing Date, CBOE will retain disciplinary jurisdiction over all CBSX TPHs

¹⁶ The Exchange notes that CBSX has already made CBSX TPHs aware of its intention to shut down via an Information Circular issued in February 2014. See Information Circular IC14-011.

¹⁷ See note 6, supra.

and persons associated with CBSX TPHs with respect to all matters that occurred through the Closing Date, pursuant to CBOE Rules 17.1 and 50.2. CBSX, CBOE and each of the Non-CBOE Owners will also each continue to be required to maintain books and records as required under the Operating Agreement. The Exchange therefore also believes the proposed rule change is consistent with Section 6(b)(1) of the Exchange Act,¹⁸ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Exchange Act and to enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange is not proposing any change to the ownership structure of CBSX via this rule filing, nor to CBOE's obligations to supervise trading on CBSX or to supervise CBSX TPHs in general, as long as they remain CBSX TPHs. The proposal therefore protects and maintains the integrity of the self-regulatory function of CBOE with respect to CBSX as a facility of CBOE.

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 Exchange Act. The closing of the CBSX stock trading facility as of the close of business on the Closing Date will result in one fewer stock trading facilities. However, there are numerous stock exchanges and trading platforms on which market participants may trade equities. CBSX currently has less than 0.1% of market share among national stock exchanges. In light of the low trading volume on CBSX and the ability of CBSX TPHs to trade equity securities on a large

¹⁸ 15 U.S.C. 78f(b)(1).

number of other trading venues, CBOE does not believe that ceasing trading on CBSX will unduly burden competition in equities trading.

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

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such shorter

time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act¹⁹ and Rule 19b-4(f)(6)²⁰ thereunder.²¹ 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.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 Commission deems this requirement to have been met.

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-2014-036 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2014-036. 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 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-2014-036 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.²²

Kevin M. O'Neill
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).