

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68691; File No. SR-CBOE-2013-008)

January 18, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Rules Relating to Preferred Market-Makers' Continuous Quoting Obligation

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 January 11, 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.

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

<sup>2</sup> 17 CFR 240.19b-4.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to Preferred Market-Makers’ (“PMMs”) continuous quoting obligations. The text of the proposed rule change is provided below.<sup>3</sup>

(additions are underlined; deletions are [bracketed])

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**Chicago Board Options Exchange, Incorporated  
Rules**

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**Rule 8.13. Preferred Market-Maker Program**

(a) *Generally.* The Exchange may allow, on a class-by-class basis, for the receipt of marketable orders, through the Exchange’s Order Routing System when the Exchange’s disseminated quote is the NBBO, that carry a designation from the Trading Permit Holder transmitting the order that specifies a Market-Maker in that class as the “Preferred Market-Maker” for that order. A qualifying recipient of a Preferred Market-Maker order shall be afforded a participation entitlement as set forth in subparagraph (c) below.

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<sup>3</sup> The Exchange recently proposed to, among other things, (a) reduce to 90% the percentage of time for which a PMM is required to provide electronic quotes in an appointed option class on a given trading day and (b) to increase to the lesser of 99% or 100% minus one call-put pair the percentage of series in each class in which a PMM must provide continuous electronic quotes in classes in which it receives PMM orders, which proposed rule change was immediately effective upon filing. Securities Exchange Act Release No. 34-67410 (July 11, 2012), 77 FR 42040 (July 17, 2012) (SR-CBOE-2012-064); see also Securities Exchange Act Release No. 34-67644 (August 13, 2012), 77 FR 49846 (August 17, 2012) (SR-CBOE-2012-077) (immediately effective rule change to delay the implementation date of the proposed rule change in rule filing SR-CBOE-2012-064 and to indicate that the Exchange will announce the new implementation date by Regulatory Circular); and Securities Exchange Act Release No. 34-68218 (November 13, 2012), 77 FR 69667 (November 20, 2012) (SR-CBOE-2012-106) (immediately effective rule change to further delay the implementation date of the proposed rule change in rule filing SR-CBOE-2012-064 and to indicate that the Exchange will announce the new implement date by Regulatory Circular). The rule text in this filing includes the effective (but not implemented) changes to the rule text made by rule filing SR-CBOE-2012-064. The Exchange expects to implement the effective rule changes to quoting obligations in filing SR-CBOE-2012-064 in conjunction with the implementation of the proposed rule change in this filing.

(b) *Eligibility*. No change.

(c) *Entitlement Rate*. No change.

(d) *Quoting Obligations*: The Preferred Market-Maker must comply with the quoting obligations applicable to its Market-Maker type under Exchange rules and must provide continuous electronic quotes (as defined in Rule 1.1(ccc)) in at least the lesser of 99% of the non-adjusted option series that have a time to expiration of less than nine months or 100% of the non-adjusted option series that have a time to expiration of less than nine months minus one call-put pair of each class for which it receives Preferred Market-Maker orders, with the term “call-put pair” referring to one call and one put that cover the same underlying instrument and have the same expiration date and exercise price.

*. . . Interpretations and Policies:*

**.01** No change.

**.02** Rule 8.13(d) does not require a Preferred Market-Maker to provide continuous electronic quotes in series that have a time to expiration of nine months or more in the classes for which it receives Preferred Market-Maker orders. However, a Preferred Market-Maker may still receive a participation entitlement in such series if it elects to quote in such series and otherwise satisfies the requirements set forth in Rule 8.13(b).

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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.

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

Rule 8.13(d) currently requires that PMMs provide continuous electronic quotes when the Exchange is open for trading in at least 90% of the non-adjusted option series of each class for which it receives PMM orders.<sup>4</sup> Rule 1.1(ccc) currently provides that a PMM will be deemed to have provided “continuous electronic quotes” if the PMM provides electronic two-sided quotes for 99% of the time.<sup>5</sup>

The Exchange proposes to exclude series that have a time to expiration of nine months or more (*i.e.*, Long-Term Equity Options Series, or “LEAPS”) from PMMs’ continuous quoting obligation. As a result, PMMs’ continuous quoting obligation will not apply to options series with a time to expiration of nine months or more.<sup>6</sup> Exchange Rule 8.7(d)(ii)(B) currently

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<sup>4</sup> See *supra* note 3 for a discussion regarding the implementation of a change to increase PMMs’ continuous quoting obligations to require continuous electronic quotes in the lesser of 99% of the non-adjusted option series or 100% of the non-adjusted option series minus one put-class pair of each appointed class.

<sup>5</sup> See Rule 1.1(ccc), which provides that a Hybrid Market-Maker will be deemed to have provided “continuous electronic quotes” if the Hybrid Market-Maker provides electronic two-sided quotes for 99% of the time that the Hybrid Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day. As discussed above, rule filing SR-CBOE-2012-064 reduced this percentage of time from 99% to 90% (which change is effective but not yet operative, and the Exchange expects to implement in conjunction with this proposed rule change). See *supra* note 3. The Rule also provides that if a technical failure or limitation of a system of the Exchange prevents the Hybrid Market-Maker from maintaining, or prevents the Hybrid Market-Maker from communicating to the Exchange, timely and accurate electronic quotes in a class, the duration of the failure will not be considered in determining whether the Hybrid Market-Maker has satisfied the 99% (and soon to be 90%) quoting standard with respect to that option class. The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.

<sup>6</sup> As set forth in Rule 8.13(d), PMMs also have no quoting obligations in adjusted option series, which are option series for which, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other

excludes series that have a time to expiration of nine months or more from the quoting obligations of Market-Makers.

The Exchange is proposing this rule change for competitive reasons. NASDAQ OMX PHLX LLC (“PHLX”) excludes, among other series, option series with a time to expiration of nine months or more from the quoting obligations of its streaming quote traders (“SQTs”), remote SQTs (“RSQTs”), directed SQTs (“DSQTs”) and directed RSQTs (“DRSQTs”), the PHLX market participants generally equivalent to Market-Makers (SQTs and RSQTs) and PMMs (DSQTs and DRSQTs).<sup>7</sup> The Exchange believes this proposal changes the continuous quoting obligation of PMMs so that PMMs are required to quote in substantially similar types of series as equivalent market participants at another options exchange and is therefore essential for competitive purposes.<sup>8</sup> CBOE believes it is disadvantageous to PMMs if they are subject to stricter quoting requirements with respect to their continuous quoting obligations than equivalent market participants at a competing options exchange.

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than 100 shares of underlying stock or Units.

<sup>7</sup> See PHLX Rule 1014(b)(ii)(D)(4). Additionally, while not specified in its rules, International Securities Exchange (“ISE”) Regulatory Information Circular 2009-248 similarly excludes these option series from the quoting obligations of competitive market-makers, including competitive market-makers that receive preferenced orders, the ISE market participants generally equivalent to PMMs. The Exchange notes that other exchanges exclude these long-term options from the quoting obligations of market participants that are equivalent to Lead Market-Makers (“LMMs”) or Designated Primary Market-Makers (“DPMs”), but not PMMs. See, e.g., NYSE MKT Options Rule 925.1NY, Commentary .01; and NYSE Arca Options Rule 6.37B, Commentary .01.

<sup>8</sup> As noted below, PMMs will still be required to quote in quarterly options series, which DSQTs and DRSQTs are not.

The Exchange also notes that this proposed rule change is consistent with the approach in current Rule 5.8, which states that strike price interval, bid/ask differential and continuity rules will not apply to equity LEAPS until the time to expiration is less than nine months.<sup>9</sup>

The Exchange believes the proposed rule change will continue to ensure that PMMs create a fair and orderly market in classes in which they receive PMM orders, as it does not absolve PMMs from providing continuous electronic quotes in a significant percentage of series of each class for a substantial portion of the trading day. PMMs must engage in activities that constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, including (1) competing with other Market-Makers to improve markets in all series of options classes comprising their appointments, (2) making markets that, absent changed market conditions, will be honored in accordance with firm quote rules, and (3) updating market quotations in response to changed market conditions in their appointed options classes and to assure that any market quote it causes to be disseminated is accurate.<sup>10</sup>

The relief proposed in this filing is mitigated by a PMM's other obligations. The proposed rule change would not excuse a PMM that is present on the trading floor from its obligation to provide a two-sided market complying with the bid/ask differential requirements in response to any request for quote by a floor broker, Trading Permit Holder or PAR Official.<sup>11</sup> The proposed rule change would also not excuse a PMM that is present on the trading floor from its obligation to provide an open outcry two-sided market complying with the bid/ask differential

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<sup>9</sup> Similarly, Rule 24.9(b)(1)(A) states that strike price interval, bid/ask differential and continuity rules will not apply to index LEAPS until the time to expiration is less than twelve months.

<sup>10</sup> See Rule 8.7(a) and (b).

<sup>11</sup> See Rule 8.7(d)(i)(C) (relating to a request for quote by a floor broker) and (ii)(C) (relating to a request for a quote by a Trading Permit Holder or PAR Official).

requirements in response to a request for a quote by a Trading Permit Holder or PAR Official directed at that Market-Maker or when, in response to a general request for a quote by a Trading Permit Holder or PAR Official, a market is not then being vocalized by a reasonable number of Market-Makers.<sup>12</sup> Further, the proposed rule change would not excuse a PMM from its obligation to submit a single quote or maintain continuous quotes in one or more series of a class to which the PMM is appointed when called upon by an Exchange official if, in the judgment of such official, it is necessary to do so in the interest of maintaining a fair and orderly market.<sup>13</sup>

The proposed rule change also adds Interpretation and Policy .02 to Rule 8.13 to clarify that while Rule 8.13(d) does not require a PMM to provide continuous electronic quotes in LEAPS in the classes for which it receives Preferred Market-Maker orders, a PMM may still receive a participation entitlement in a LEAPS series if it elects to quote in that series and otherwise satisfies the requirements set forth in Rule 8.13(b). If a PMM elects to quote in a LEAPS series in one of its preferred classes, in order to receive the participation entitlement in that series, the PMM must still be quoting at the best bid or offer on the Exchange and satisfying its other obligations set forth in Rule 8.13(b). PMMs already receive participation entitlements in series they are not required to quote. As discussed above, a PMM is currently required to provide continuous electronic quotes in at least 90% of the non-adjusted option series of each class for which it receives PMM orders.<sup>14</sup> If the PMM elects to quote in 100% of the non-adjusted series in the class, it will receive a participation entitlement in all of those series when quoting at the best price, including the 10% of the series in which it is not required to quote.

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<sup>12</sup> See Rule 8.7(d)(iv).

<sup>13</sup> Id.

<sup>14</sup> As discussed above, this obligation will change upon implementation of a recent rule change. See supra note 3.

Thus, under the proposed rule change, the market would continue to function as it does now. The Exchange believes this benefit is appropriate, as it incentivizes PMMs to quote in as many series as possible in the classes in which it receives PMM orders, even LEAPS, which Rule 8.13 does not require them to continuously quote.

The Exchange does not believe that the proposed rule change would adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity. Rather, the Exchange believes that its current market structure with its high rate of participation by Market-Makers permits the proposed rule change without fear of losing liquidity. This is especially true given that the quoting obligations of LMMs, DPMs, and electronic DPMs ("e-DPMs") in Hybrid option classes set forth in Rules 8.15A, 8.85, and 8.93, respectively, will still apply to LEAPS, so the Exchange may still have a disseminated continuous two-sided market in LEAPS. Further, the Exchange believes that the current quoting obligation in LEAPS is a minor part of PMMs' overall obligations, so the burden of continuous quoting in these series by PMMs while DPMs and LMMs are also required to continuously quote in those series is counter to efforts to mitigate the number of quotes collected and disseminated. The Exchange also believes that market-making activity may increase as a result of adopting a provision that is already in place at another options exchange. Additionally, the Exchange believes that the proposed rule change to clarify that PMMs may still receive participation entitlements in LEAPS in the classes for which they received PMM orders in which they are quoting, even though Rule 8.13(d) does not require the PMMs to continuously quote in LEAPS, will incent PMMs to quote in LEAPS, which may increase liquidity in those classes.



The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 90 days following the effective date. The implementation date will be no later than 150 days following the effective date.

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>15</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>16</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>17</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 the proposed rule change promotes just and equitable principles of trade because it reduces burdens and unnecessary restrictiveness on PMMs. The quoting obligations of LMMs, DPMs, and e-DPMS will still apply to LEAPS, which the Exchange believes eliminates the risk of a material decrease in liquidity of LEAPS. The Exchange still imposes many obligations on PMMs to maintain a fair and orderly market in their

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> Id.

appointed classes, including obligations to provide continuous electronic quotes for a significant part of the trading day in a substantial number of series of each appointed class. Further, the elimination of PMMs' continuous quoting obligations in LEAPS is a minor change and should not impact the quality of CBOE's market. Consequently, continuous quotes in these series by PMMs, in addition to DPMs and LMMs, increases quote traffic and burdens systems without a corresponding benefit. Thus, by not requiring PMMs to continuously quote in LEAPS, the Exchange's proposed rule change would further the Exchange's goal of measured quote mitigation. Additionally, PMMs will continue to be obligated to quote the series when requested by a floor broker, Trading Permit Holder, or PAR Official, or if the need otherwise arises. Accordingly, the proposal supports the quality of CBOE's markets by helping to ensure that PMMs will continue to be obligated to quote in series when necessary. The Exchange believes these changes are reasonable and are offset by PMMs' continued responsibilities to provide significant liquidity to the market to the benefit of market participants. In addition, the proposed rule change removes impediments to and allows for a free and open market, while protecting investors, by promoting additional transparency regarding PMMs' obligations and benefits in the Exchange Rules. In addition, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination, as the proposed rule change provides the proposed relief for all PMMs.

The proposed rule change to clarify that PMMs may still receive participation entitlements in LEAPS in the classes for which they received PMM orders in which they are quoting, even though Rule 8.13(d) does not require the PMMs to continuously quote in LEAPS, further supports the quality of the Exchange's trading markets because it encourages PMMs to quote in LEAPS, which ultimately benefits all investors. This benefit is offset by the PMMs'

continued quoting obligations and the fact that they must still satisfy all of their other obligations in order to receive the entitlement in these “non-required” series. The Exchange also believes that this proposed change is consistent with its current practice, pursuant to which PMMs receive participation entitlements in additional series in which they elect to quote above the minimum percentage of series in which they are required to continuously quote under Rule 8.13.

The proposed rule change is also consistent with the rules of another options exchange.<sup>18</sup> The proposed rule change requires its PMMs to provide continuous quotes in the same types of series as equivalent market participants at a competing options exchange, which the Exchange believes could increase market-making activity on the Exchange.

For the foregoing reasons, the Exchange believes that the balance between the benefits provided to and the obligations imposed upon PMMs by the proposed rule change is appropriate.

**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 proposed rule change provides the same relief to a group of similarly situated market participants – PMMs. While other types of Market-Makers will still be required to continuously quote in LEAPS, the Exchange believes this is not unfairly discriminatory, as its Rules already impose different obligations on each type of Market-Maker based on the purposes and functions of, and benefits received by, that type of Market-Maker (e.g. Market-Makers are already not required to continuously quote in LEAPS, while LMMs, DPMs, and e-DPMs are, and will continue to be).

CBOE believes that the proposed rule change will in fact relieve any burden on, or otherwise promote, competition. The Exchange believes the proposed rule change is

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<sup>18</sup> See supra note 7.

procompetitive because it would enable the Exchange to provide its PMMs with rules that are similar to those of another options exchange applicable to equivalent market participants at that exchange. The Exchange believes this will promote trading activity on the Exchange to the benefit of the Exchange, its Trading Permit Holders, and 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

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 Act<sup>19</sup> and Rule 19b-4(f)(6)<sup>20</sup> 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.

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:

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-008 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-2013-008. 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, D.C. 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 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-2013-008 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.<sup>21</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).