

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69560; File No. SR-CBOE-2013-050)

May 10, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Complex Order Router Subsidy Program

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 May 8, 2013, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt an additional qualification requirement to participate in CBOE’s Complex Order Router Subsidy Program. The text of the proposed rule change is 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 8, 2013, CBOE established the Complex Order Router Subsidy Program (the "CORS Program" or "Program") which allows CBOE to enter into subsidy arrangements with any CBOE Trading Permit Holder ("TPH") (each, a "Participating TPH") or Non-CBOE TPH broker-dealer (each a "Participating Non-CBOE TPH") that provide certain order routing functionalities to other CBOE TPHs, Non-CBOE TPHs and/or use such functionalities themselves.³ (The term "Participant" as used in this filing refers to either a Participating TPH or a Participating Non-CBOE TPH). Specifically, CBOE TPHs and non-CBOE TPHs that participate in the CORS Program receive a payment from CBOE for every executed contract for complex orders routed to CBOE through their system. The purpose of this proposed change is to add an additional feature that a Participant's order routing functionality must have to qualify for the Program.

SR-CBOE-2013-032 includes a description of the features that an order routing functionality of a Participant must have, and the performance requirements that the order routing functionality must satisfy, in order to qualify for the program.⁴ Any CBOE TPH

³ See Securities Exchange Act Release No. 69203 (March 21, 2013), 78 FR 18655 (March 27, 2013) (SR-CBOE-2013-032).

⁴ SR-CBOE-2013-032, pp. 5-7. The primary functional requirements under the CORS Program are that an order routing functionality has to: (i) be capable of interfacing with CBOE's API to access current CBOE trade engine functionality and (ii) cause CBOE to be the default destination exchange for complex orders,

or broker-dealer that is not a CBOE TPH is permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features required in SR-CBOE-2013-032. In addition to the features described in SR-CBOE-2013-032, the Exchange is proposing to require a Participant's order routing functionality to provide current consolidated market data for complex orders from the U.S. options exchanges that offer complex order execution systems in order for the Participant to qualify to participate in the Program. A Participant shall have forty-five (45) days from the date that an exchange launches trading of complex orders to provide that exchange's market data for complex orders as part of its order routing functionality for any exchange that does not yet exist or that does not offer complex order execution systems as of May 6, 2013.

Nothing in the proposed subsidy arrangement relieves any CBOE TPH or non-CBOE TPH broker-dealer that is using an order routing functionality whose provider is participating in the CORS Program ("Users") from complying with its best execution obligations. Just as with any customer order and any other routing functionality, both a CBOE TPH and a non-CBOE TPH broker dealer have an obligation to consider the availability of price improvement at various markets and whether routing a customer order through a functionality that incorporates the features described above would allow for access to such opportunities if readily available. The Exchange recognizes that, unlike simple, non-complex orders, there is no NBBO for complex orders and an exception from the prohibition on trade-throughs is provided for any transaction that is

but allow any user to manually override CBOE as the default destination on an order-by-order basis.

effected as a portion of a complex order.⁵ The Exchange believes that the proposed additional requirement to provide consolidated market data for complex orders provides an additional tool for Users to assess the availability of price improvement at other markets and therefore facilitates compliance with their best execution obligations. Finally, any User, whether or not a CBOE TPH, needs to conduct best execution evaluations on a regular basis, at a minimum quarterly, that include its use of any router incorporating the features described above.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"), in general. Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change ensures that CBOE TPHs and non-CBOE TPH broker dealers that use a Participant's order router functionality are provided current consolidated market data for complex orders, which lets them assess the availability of

⁵ See CBOE Rule 6.81(b)(7).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

price improvement at other markets. This information facilitates a User's compliance with its best execution obligations, thereby enhancing investor protection and promoting just and equitable principles of trade.

In addition, the Exchange believes that this proposed change is not unfairly discriminatory because the proposed additional requirement is applicable to every Participating CBOE TPH and Participating Non-CBOE TPH. Additionally, every user of a Participant's order routing functionality would be receiving the consolidated market data for complex orders. Finally, any CBOE TPH or broker-dealer that is not a CBOE TPH may participate in the CORS Program, provided that its complex order routing functionality incorporates the requirements set forth in SR-CBOE-2013-032 and above.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change will impose an unnecessary burden on intramarket competition because it will apply equally to all participating parties. Additionally, the Exchange believes the proposed rule change will reduce the burdens on investors who use a Participant's order routing functionality that result from having to comply with best execution obligations, as they will not themselves individually receive market data for complex orders from each exchange that offers complex order execution systems. Further, the Exchange does not believe that such change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that, should

the proposed changes make CBOE more attractive for trading, market participants trading on other exchanges can always elect to provide order routing functionality to CBOE for complex orders or use order routing functionalities that are a part of the CORS Program for complex orders.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

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

IV. Solicitation of Comments

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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

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-2013-050 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-2013-050. 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-2013-050, 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).