

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70856; File No. SR-CBOE-2013-109)

November 13, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Market Maker Appointment Cost Rebalances

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 November 1, 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 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 amend its rules regarding Market-Maker appointment cost rebalances. 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, on the Commission’s website (<http://www.sec.gov>), 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

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<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.

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

The Exchange proposes to amend its rules regarding Market-Maker appointment cost rebalances. Appointments to act as a Market-Maker “cost” different amounts for different classes (with no classes costing more than 1.0). For purposes of ease of organization, the Exchange places classes into different tiers, with all the classes in a certain tier costing the same amount per appointment (so, for example, all the classes in tier B cost 0.05 per class appointment, all the classes in tier E cost .01 per class appointment, etc.). Each Trading Permit held by a Market-Maker has an appointment credit of 1.0. A Market-Maker may select for each Trading Permit the Market-Maker holds any combination of Hybrid classes and Hybrid 3.0 classes, whose aggregate appointment cost does not exceed 1.0.<sup>4</sup> The Exchange, on a quarterly basis, can rebalance the tiers into which different classes fall, meaning that the Exchange can elect to move a class from one tier to another (with that class’ corresponding appointment cost changing). The Exchange proposes to memorialize in the rule that the Exchange will announce any rebalances at least ten (10) business days before the rebalance takes effect. Such rebalances will be announced to Trading Permit Holders (“TPHs”) via Regulatory Circular. Current Exchange practice includes announcing such rebalances more than ten business days prior to taking effect, but this practice is not codified in the rules. The Exchange proposes to make this codification.

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<sup>4</sup> See CBOE Rule 8.3(c)(iv).

When the Exchange effects a rebalancing (a class changing tiers), the class is assigned the appointment cost of that new tier. Upon such rebalancing, each Market-Maker with a Virtual Trading Crowd (“VTC”) appointment<sup>5</sup> will be required to hold the appropriate number of Trading Permits reflecting the revised appointment costs of the Hybrid classes constituting the Market-Maker's appointment. This means that, when classes are rebalanced, the sum of a Market-Maker's appointment costs cannot exceed the number of Trading Permits that a Market-Maker holds. Market-Makers adjust their own appointments via an online appointment system that allows them to select classes and assigns the relevant appointment cost to each class. The Exchange proposes to add language to this rule to provide for the handling of situations in which, upon notice of rebalancing, a Market-Maker fails to adjust his appointments such that the sum of his appointment costs do not exceed the number of Trading Permits the Market-Maker holds. The proposed language would state that if a Market-Maker with a VTC appointment holds a combination of appointments whose aggregate revised appointment cost is greater than the number of Trading Permits that Market-Maker holds, the Market-Maker will be assigned as many Trading Permits as necessary to ensure that the Market-Maker no longer holds a combination of appointments whose aggregate revised appointment cost is greater than the number of Trading Permits that Market-Maker holds.

This means that, upon rebalancing, if a Market-Maker's aggregate appointment cost is higher than the number of permits he holds, the Exchange will give the Market-Maker the number of permits necessary to ensure that the Market-Maker's aggregate appointment cost is no longer higher than the number of permits he holds (and the Market-Maker will be assessed the corresponding Trading Permit fees for such added Trading Permits). So, for example, consider a

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<sup>5</sup> A VTC appointment allows a Market-Maker to quote electronically in a class.

situation in which a Market-Maker's aggregate appointment cost for the classes for which he holds Market-Maker appointments prior to a rebalancing is 4.90 and the Market-Maker holds 5 Trading Permits. The Exchange then rebalances the appointment costs of classes and announces such rebalancing at least ten days prior to the rebalancing takes effect. Upon this rebalancing taking effect, the Market-Maker's appointment cost is now going to be 5.40. If the Market-Maker does not adjust his appointments prior to such rebalancing taking effect, the Exchange will simply assign that Market-Maker a sixth Market-Maker Trading Permit.

This solution prevents the Exchange from having to institute regulatory proceedings against a Market-Maker whose revised aggregate appointment cost exceeds the number of Trading Permits the Market-Maker holds. Otherwise, the Exchange must expend considerable resources coordinating with the Market-Maker to ensure that the Market-Maker adjusts his appointments such that the Market-Maker's aggregate appointment cost does not exceed the number of Trading Permits the Market-Maker holds (as the Exchange does not have the ability to adjust the Market-Maker's VTC appointments).

## 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>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</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 facilitating transactions in securities, to

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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>8</sup> requirement 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)(1) of the Act,<sup>9</sup> which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change would allow the Exchange to ensure that no Market-Maker has an aggregate appointment cost that exceeds the number of Trading Permits the Market-Maker holds. As such, the proposed rule change removes an impediment to and perfects the mechanism of a free and open market system and, in general, protects investors and the public interest (as having an aggregate appointment cost that exceeds the number of Trading Permits a Market-Maker holds would provide an unfair advantage to that Market-Maker). Because the Exchange does not have the ability to adjust the VTC appointments of a Market-Maker whose aggregate appointment cost exceeds the number of Trading Permits that the Market-Maker holds, the proposed rule change also helps the Exchange to ensure compliance by TPHs with Exchange rules. The proposed rule change would apply to all Market-Makers equally.

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

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<sup>8</sup>

Id.

<sup>9</sup> 15 U.S.C. 78f(b)(1).

does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will apply to all Market-Makers (and only Market-Makers can have a Market-Maker appointment). CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change only applies to the Market-Maker appointment process on CBOE, and also because the proposed rule change is intended for a compliance, and not competitive, purpose.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2013-109 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 No. SR-CBOE-2013-109. 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 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 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 No. SR-CBOE-2013-109 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>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).