

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68743; File No. SR-CBOE-2013-009)

January 28, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Minimum Volume Orders

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 16, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to codify the “Minimum Volume Order.” The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

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**Chicago Board Options Exchange, Incorporated  
Rules**

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**Rule 6.44. Bids and Offers in Relation to Units of Trading**

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... Interpretations and Policies:

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

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

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.05 A minimum volume order bid or offer shall be deemed to have been made for the full size of the order or any lesser number of option contracts that is at least equal to the minimum volume specified. Minimum volume orders and bids and offers made on a minimum volume basis shall be deemed to be all-or-none for purposes of Interpretations and Polices .01 and .03 above. To the extent available pursuant to Rule 6.53, minimum volume orders may only be made available by the Exchange for open outcry trading.

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### **Rule 6.53. Certain Types of Orders Defined**

One or more of the following order types may be made available on a class-by-class basis. Certain order types may not be made available for all Exchange systems. The classes and/or systems for which the order types shall be available will be as provided in the Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

(a) – (v) *No changes.*

(w) *Minimum Volume Order.* A minimum volume order is an order represented in open outcry for which an execution must at least equal the minimum volume specified. To the extent there is any remaining balance of a minimum volume order after the minimum volume is executed, the remainder will no longer have a minimum fill contingency and will be represented, in open outcry or electronically, unless cancelled by the customer. A minimum volume order that has a minimum volume size equal to the full size of the original order will be considered an all-or-none order as described in Rule 6.53(i).

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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

The Exchange is proposing to add new paragraph (w) to Exchange Rule 6.53, Certain Types of Orders Defined, to codify an open outcry order type, the “Minimum Volume Order.” Because of the complexity of programming to make this order available electronically, this order type is currently only supported for routing to, and utilized on, the Exchange’s trading floor for open outcry trading,<sup>3</sup> and, thus, the Exchange is proposing to harmonize its Rules with the current functionality and practice.

The proposed definition of a Minimum Volume Order is similar to an existing definition in the Exchange’s Screen-Based Trading rules.<sup>4</sup> In the proposed language, a Minimum Volume Order is an order represented in open outcry for which an execution must at least equal the minimum volume specified. To the extent there is a remaining balance of the original order after the minimum volume amount has been executed, the remainder of the order will no longer have any minimum volume contingency and will be represented in open outcry or electronically unless cancelled by the customer. The proposed language also notes that a Minimum Volume

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<sup>3</sup> Please note the Exchange may decide to introduce this order type electronically but such action would be subject to a separate rule change filing. The Exchange notes that it currently supports various order types that by their nature or terms may only be available for open outcry trading (e.g., Not Held Orders) or may only be available for electronic trading (e.g., Reserve Orders). See, e.g., Exchange Rule 6.53(g) and (t).

<sup>4</sup> See Exchange Rule 43.2(a)(9)(E), which defines a “Minimum Volume Order” as “... an order where the fill should be at least equal to the minimum volume specified, which is an amount less than the total volume of the order.” The Exchange does not currently trade options pursuant to its Screen-Based Trading Rules (Chapters XL – XLIX).

Order that has a minimum volume size equivalent to the full size of the original order would be considered an All-or-None Order as described in Rule 6.53(i).<sup>5</sup>

For example, assume a Trading Permit Holder (“TPH”) represents an order to buy 50 contracts at \$10.00 that is a Minimum Volume Order with a minimum fill size of 30. This order can only execute if at least 30 contracts of the order would trade against other trading interest. In this scenario, if a Floor Broker represents the Minimum Volume Order to buy in open outcry and another order or quote for 30 contracts were offered to sell against it, as the minimum value was met, 30 contracts of the Minimum Volume Order to buy would execute against the sell order/quote and the remaining 20 contracts of the Minimum Volume Order to buy would be represented on the Exchange’s trading floor or electronically unless cancelled by the customer. In the same example, if orders and/or quotes for only 10 contracts were offered to sell against the Minimum Volume Order, there would be no trade because the minimum size of 30 contracts would not be satisfied.

In the case where the minimum volume size specified is equivalent to the total volume of the order, then the order will be considered the same as an All-or-None Order as specified in Exchange Rule 6.53(i). In the above example, if the order entered to buy was a Minimum Value [sic] Order for 50 contracts with a minimum quantity of 50 contracts then the order would be considered an All-or-None Order as described in Rule 6.53(i), and, as such, the entered order would only execute if the 50 contracts could be executed in its entirety.

The Exchange is also proposing to amend Exchange Rule 6.44, Bids and Offers in Relation to Units of Trading, to address Minimum Volume Orders. Rule 6.44, in relevant part, provides that subject to certain provisions in the Exchange rules, bids and offers made on the

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<sup>5</sup> Under Rule 6.53(i), an All-or-None Order is currently defined as “... a market or limit order which is to be executed in its entirety or not at all.”

floor are deemed to be for one option contract unless a specific number is expressed in the bid or offer. A bid or offer for more than one option contract which is not made on an All-or-None [sic] are deemed to be for that amount or any lesser number of option contracts. An All-or-None bid or offer is deemed to be made only for the amount stated. Proposed new Interpretation and Policy .05 to Rule 6.44 will provide that, to the extent that the Exchange determines to make the Minimum Volume Order type available,<sup>6</sup> a Minimum Volume Order bid or offer would be deemed to have been made for the full size of the order or any lesser number of option contracts that is at least equal to the minimum volume specified.<sup>7</sup>

In addition, a Minimum Volume Order would be deemed to be an All-or-None Order for purposes of certain other provisions of Rule 6.44. The particular provisions are Interpretations and Policies .01 and .03 of Rule 6.44.<sup>8</sup> Interpretation and Policy .01 of Rule 6.44 provides the following: (i) a bid or offer may be made and transacted on an All-or-None basis if the All-or-None bid or offer represents the only bid or offer available at the best price in the market at the time the All-or-None bid or offer is executed;<sup>9</sup> (ii) an All-or-None order may not be crossed with another All-or-None order unless all bids or offers at the same price at which the cross is to be

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<sup>6</sup> The introductory paragraph to Rule 6.53 currently provides that one or more of the identified order types may be made available on a class-by-class basis, and certain order types may not be made available for all Exchange Systems. The introductory paragraph to Rule 6.53 also provides that the classes and/or systems for which the order types shall be available will be as provided in the Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

<sup>7</sup> By comparison, for example, as noted above an all-or-none bid or offer is deemed to be made only for the amount stated. See Rule 6.44.

<sup>8</sup> The Exchange notes that Interpretation and Policy .02 relates to All-or-None orders in the Exchange's electronic book, and because Minimum Volume Orders are only available in open outcry trading, this provision is not applicable to Minimum Volume Orders.

<sup>9</sup> In other words, a Minimum Volume Order would, like an All-or-None Order, yield priority to all other interest at the same price on the trading floor.

effected have been filled; and (iii) if two or more All-or-None bids or offers represent the only bids or offers at the best price in the market, priority shall be afforded to such All-or-None bids or offers in the sequence in which they are made. Interpretation and Policy .03 provides that the Exchange may restrict the entry of All-or-None Orders in one or more classes or series of options whenever, in its judgment, the interests of maintaining a fair and orderly market are best served. Proposed new Interpretation and Policy .05 to Rule 6.44 will reflect the applicability of these two provisions to Minimum Volume Orders.<sup>10</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (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>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</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 [sic] 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

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<sup>10</sup> Specifically, proposed new Interpretation and Policy .05 would also provide that Minimum Volume Orders and bids and offers made on a Minimum Volume basis shall be deemed to be All-or-None for purposes of Interpretations and Policies .01 and .03 of Rule 6.44. This proposed Interpretation and Policy .05 is similar to existing Interpretation and Policy .04 to Rule 6.44, which provides that Fill-or-Kill orders and bids or offers made on a Fill-or-Kill basis shall be deemed to be All-or-None for purposes of Rule 6.44.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

change is consistent with the Section 6(b)(5)<sup>13</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 addition of Rules 6.44.05 and 6.53(w) promotes just and equitable principles of trading by aligning the text of the rules with the actual functionality, which is currently available in open outcry. By updating the text of the Exchange's rules to describe the orders already supported by the Exchange, the proposed rule change is attempting to harmonize the functionality with the text of the Exchange Rules and is thereby promoting clarity and eliminating confusion. In addition, the proposed language alerts TPHs of the functionality of the order, and, thus, allows investors to use the order type, to the extent made available by the Exchange, with full knowledge of how the order type will function.

The Exchange notes that the proposed Minimum Volume Order type definition is similar to an existing order type in the Exchange's Screen-Based Trading Rules.<sup>14</sup> Additionally, the Exchange notes that the proposed order type is similar to order types available on other markets, including on the NASDAQ OMX PHLX LLC ("PHLX")<sup>15</sup> and on the International Securities Exchange ("ISE").<sup>16</sup>

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<sup>13</sup> Id.

<sup>14</sup> See Exchange Rule 43.2(a)(9)(E).

<sup>15</sup> See PHLX Rule 3301(f)(5), which provides that "Minimum Quantity Orders" are orders that require "a specified minimum quantity of shares be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of System Hours Immediate or Cancel."

<sup>16</sup> See ISE Rule 715(l) which defines a "Minimum Quantity Order" as one that "is available for partial execution, but each partial execution must be for a specified number of contracts or greater."

**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. Specifically, the Exchange believes the proposed rule change will not impose any burden because the Exchange is merely harmonizing its Rules with current functionality and practice. Further, CBOE believes that the proposed rule change will relieve any burden on, or otherwise promote, competition because this order type is currently offered by other Exchanges. Thus, clarifying the Exchange rules would give further authority to compete with other exchanges currently offering the order type.

**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>17</sup> and Rule 19b-4(f)(6)<sup>18</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

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

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:

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-2013-009 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-2013-009. 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 offices 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-2013-009, 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>19</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).